Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

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U.S. Customs Service

Treasury Decisions

19 CFR Part 177

(T.D. 84-15)

Tariff Classification of Bulk Liquid Chocolate

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Continuation of position.

SUMMARY: This document advises the public that after consideration of numerous public comments and extensive review, Customs has determined to continue its current position regarding the tariff classification of certain bulk chocolate imported in liquid form for further manufacturing. The chocolate will be classified for Customs purposes under the provision for sweetened chocolate in any other form, in item 156.30, Tariff Schedules of the United States (TSUS). A proposed change of position, which was published in response to a public petition and would have resulted in the classification of this merchandise under the tariff provision for sweetened chocolate in bars or blocks weighing 10 pounds or more each, has not been adopted.

EFFECTIVE DATE: January 12, 1984.

FOR FURTHER INFORMATION CONTACT: Lee C. Seligman, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1983, a notice was published in the Federal Register (48 FR 11956), advising the public that, as a result of a request for a tariff classification ruling, Customs was reviewing its current position of classifying certain bulk liquid chocolate under the provision for other sweetened chocolate in item 156.30, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). Customs requested comments on the proposal to reclassify that merchandise under the provision for sweetened chocolate in bars or blocks weighing 10 pounds or more each in item 156.25, TSUS. Comments were to have

been received by May 23, 1983. However, the comment period was extended to June 22, 1983, by notice published in the Federal Register on May 20, 1983 (48 FR 22747).

The requestor represented to Customs that the most economical method of transporting the chocolate from Canada to the United States is in 40,000 pound loads in temperature-controlled tank trucks. If left at room temperature, the chocolate would harden. However, the trucks contemplated for use in transporting the chocolate would maintain sufficient heat during transit to keep the chocolate in a molten state during transportation and transfer in order to facilitate unloading and further processing in the United States. Transport of the chocolate in other than molten form would substantially increase the costs of the contemplated operation and probably create a result which would be economically unfeasible.

It was also represented to Customs that the legislative history of item 156.25, TSUS, clearly shows that Congress intended the lower rate of duty to apply to all bulk imports of sweetened chocolate for manufacturing use and that the specification of "bars or blocks weighing 10 pounds or more each" merely reflected Congress' understanding of the form in which chocolate in bulk for further manufacturing was transported at the time this provision was originally enacted.

Customs sought public comment on the proposal, especially on the following issues:

(1) Does the legislative history of item 156.25, TSUS, clearly reveal a Congressional intent to prescribe a lower rate of duty for all bulk shipments of sweetened chocolate and not just those "in bars and blocks weighing 10 pounds or more each"?

(2) If the answer to the previous question is affirmative, is it proper for Customs to ignore the phrase "in bars or blocks weighing 10 pounds or more each" in considering whether liquid chocolate may be classified under item 156.25, TSUS?

(3) If so, how should chocolate in bulk form for further manufacturing be defined?

Although no uniform and established practice has been found to exist (within the meaning of section 177.10(c), Customs Regulations (19 CFR 177.10(c)), Customs' decision in this matter could have had a substantial impact upon both importers and domestic manufacturers. Merchandise subject to this decision could be exempt from the quota restraints of items 950.15 and 950.16, TSUS.

Analysis of Comments and Findings

Numerous comments were received in response to the published notice. Replies were received from members of the general public, members of the trade, and several members of Congress.

Of the comments received from the general public, 38 favored the change of position, 35 favored the present classification scheme,

and 31 expressed either an alternative position, such as averaging the duty rates at issue, or did not clearly set forth a position.

The comments from members of the trade were almost unanimous in their opposition to the proposed change.

Our review of the petition, the comments, and the language of the provisions at issue leads us to believe that Customs' Current classification is correct. We believe that the language set forth in items 156.25, TSUS, and 156.30, TSUS, is clear and unambiguous and, therefore, resort to the limited legislative history is unnecessary. *C. J. Tower & Sons* v. *United States,* 41 CCPA 195, C.A.D. 550 (1953).

Absent the clear indication that Congress intended a commercial or trade definition to prevail, it is a common and permissible practice to resort to standard dictionary and encyclopedic definitions to gain an understanding of tariff terms. Our reading of these standard sources uniformly indicates that the expression "bars or blocks weighing 10 or more pounds each" intends a *solid* mass, usually rectangular in shape, or a compact *solid* piece of material.

Even assuming that sufficient ambiguity exists to require reference to the limited legislative history available, the petition still should be denied. Our reading of the relevant legislative floor debate surrounding amendment of the predecessor provision leads to the conclusion that Congress intended a lower rate of duty *only* for *small* quantities of *high quality* chocolate from Switzerland which was not domestically available and which was shipped in "*bars or blocks of 10 or more pounds each* (emphasis provided)." Chocolate not meeting these strict requirements in both form and quantity was to be, and has been, classified under the provision for chocolate in *any other form* (emphasis provided). Congress, by enactment of the amendment to the tariff schedules of 1929 (and the carrying forward of the identical language to date), expressly provided for *certain* sweetened chocolate (*i.e.,* "in bars or blocks of 10 or more pounds each" in paragraph 777 (now item 156.25, TSUS)) to be dutiable at one rate and, if *in any other form,* at a second higher rate (emphasis provided). (71 Con. Rec. 5672, 5673 (November 16, 1929)).

Furthermore, Congress, being charged with knowledge of trade practice, common meaning, and the position taken by Customs regarding the application of these provisions, has never modified or expanded the coverage of this provision. Indeed, ratification of Customs position by failure to modify these provisions, even during total revision culminating in the Tariff Classification Act of 1962, indicates that the provisions in question were and are being administered in accordance with Congressional intent. (Pub. L. 87–456, 76 Stat. 72 (May 24, 1962)).

CONTINUATION OF POSITION

After careful analysis of all comments received and a thorough review of this matter, the proposal to classify liquid bulk chocolate under the provision for sweetened chocolate in bars or blocks weighing 10 pounds or more each in item 156.25, TSUS, has not been adopted. Accordingly, Customs will continue its current position of classifying the liquid bulk chocolate in question under item 156.30, TSUS.

DRAFTING INFORMATION

The principal author of this document was Larry L. Burton, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: November 18, 1983.

[Published in the Federal Register, January 12, 1984 (49 FR 1484)]

WILLIAM GREEN,
Acting Commissioner of Customs.

(T.D. 84-16)

19 CFR Part 10

Refund of Duties on Imported Watches and Watch Movements

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim Regulation.

SUMMARY: This document amends the Customs Regulations to reflect a new incentive designed by the Congress to stimulate watch assembly activity in the U.S. insular possessions. The new incentive is in the form of a production incentive certificate entitling the holder (or another party to which it has transferred some or all of its entitlement) to secure the refund of duties paid to Customs on specified watches, watch movements, (including solid state watches and watch movements) and watch parts entered into the United States during a 3-year period beginning 2 years before the issue date of the certificate of entitlement. This incentive will be administered jointly by the Departments of Commerce and Interior and by Customs.

EFFECTIVE DATE: January 12, 1984.

COMMENTS: Because the statute upon which this regulation is based became effective on January 27, 1983, the amendment is being published as an interim regulation, effective on (the date of publication in the Federal Register). However, written comments received by Customs before (60 days from the date of publication)

will be considered in determining whether any changes to the regulation are required before a final rule is published.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Betty L. Colburn, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5307) or Richard Seppa or Frank Creel, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230 (202-377-1660).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pub. L. 97-446, an Act "to reduce certain Customs duties, to suspend temporarily certain duties, to extend certain existing suspensions of duties, and for other purposes," was approved on January 12, 1983.

The Act provides a new incentive designed to stimulate watch assembly activity in the United States insular possessions (i.e., U.S. Virgin Islands, Guam, American Samoa). Since 1959, the watch and watch movement industry has been a significant factor in the economy and in employment opportunities in the U.S. insular possessions. This has been, in part, due to tariff incentives provided under the Tariff Schedules of the United States (TSUS, 19 U.S.C. 1202), which previously afforded duty-free entry to watches and watch movements which did not contain foreign materials to the value of more than 70 percent of their total value.

According to the legislative history of Pub. L. 97-446 (See H.R. 4566, section 115, page 14), the industry provided more than 1300 jobs at its peak. However, since 1980, over half the industry has closed down and employment, at the time of enactment, was under 100 people. This is largely due to a market shift away from mechanical watches and toward quartz digital watches. Producers in the insular possessions have not refitted to accommodate this market shift.

Import levels from the U.S. insular possessions are low as compared to quotas against which they are monitored. The U.S. Virgin Islands, for example, shipped 2.6 million units in 1981 against a quota of just over 7 million units.

The intent of the Act is to spur production in the insular possessions and to encourage those producers who are there to stay and those producers who have left, to return.

Section 110 of the Act amended the TSUS by eliminating the foreign content value limitation set out in General Headnote 3(a), TSUS. Prior to the Act, General Headnote 3(a), TSUS, provided

that watches and watch movements manufactured in and imported from the insular possessions could enter the United States free of duty if they did not contain foreign materials to the value of more than 70 percent of their total value. Former law also provided a quantitative restriction on such imports equal to one-ninth of apparent U.S. consumption.

The Act changes the tariff schedules as follows: (1) eliminates the limit of 70 percent content from foreign countries; (2) establishes the annual limit on duty-free entry at 7 million units in 1984 and at 10 million units or one-ninth of apparent U.S. consumption (whichever is greater) in subsequent years; (3) provides authority to the Secretaries of Commerce and Interior to redistribute the annual limit among the territories; and (4) provides a duty rebate for the industry which would reflect the amount of local labor content in the watches.

However, the Act forbids the extension of General Headnote 3(a), TSUS, privileges and benefits to any articles containing materials to which rates of duty set forth in Column 2 (products of Communist countries as defined in General Headnote 3(f), TSUS) apply and limits the size of the 1983 calendar year allocation of watch quotas to 3,000,000 units produced or manufactured in the U.S. Virgin Islands, 1,200,000 units in Guam, and 600,000 units in American Samoa. In 1984 and thereafter, the Departments of Commerce and Interior will have the authority to adjust the size of the allocation downward by no more than 10 percent or upward by no more than 20 percent in any one year.

The new incentive created by the Act is in the form of a production incentive certificate which can be used to secure the refund of duties paid on specified watches, watch movements, and watch parts entered during a 3-year period beginning 2 years before the issue date of the certificate. This certificate is to be issued to eligible producers by March 1 of each calendar year.

The incentive will be administered jointly by the Departments of Commerce and Interior and by Customs. Copies of International Trade Administration, Form ITA–360, Certificate of Entitlement to Secure the Refund of Duties on Watches and Watch Movements, will be issued by Commerce/Interior and kept by the insular producers on their premises or at another location approved in advance by the Departments. Form ITA–361, A Request for Refund of Duties on Watches and Watch Movements, will be presented by the certificate holder (or, because the certificate entitlements are transferable, another party legally entitled to a portion or all of the entitlement) to a Customs official at the port of entry where the articles were entered. The documentation accompanying the request form shall include a copy of the import entry, providing proof that duty was paid on the watches and watch movements.

The Form ITA–360 certificate expires 1 year from its date of issuance. A refund request made by either the insular producer itself

or by a transferee named by the insular producer on Form ITA-361 must be filed within this 1-year period. This expiration date applies equally to all refund requests, whether a single request for the entire amount specified in the Form ITA-360 certificate or multiple requests for partial amounts. Refund requests will be accepted until either the amount specified in the certificate is depleted or until the certificate expires 1 year from its date of issuance.

A request for refund on Form ITA-361 must be filed at the port where the watch import entry was originally filed, then forwarded to the appropriate Customs regional office of that port for payment, and finally, together with payment, sent back to the originating port. Every effort will be made to expedite the processing of these refunds. A fee of 5 percent will be deducted from each refund request as reimbursement to salaries and expenses of those Customs personnel processing the request. This fee may later be reduced if actual costs are less than the 5 percent amount.

This document amends Part 10, Customs Regulations (19 CFR Part 10), by adding a new section 10.181 to provide a procedure to secure the refund of duties on watches and watch movements for watch producers in the U.S. insular possessions.

COMMENTS

Before adopting the regulation as a final rule, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE PROVISIONS

As discussed in the legislative history of Pub. L. 97-446, due to the state of the watch industry in the U.S. insular possessions, the need for immediate action to stimulate watch assembly activity in these areas, and the fact that the Act became effective on January 27, 1983, it has been determined that, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are impracticable, unnecessary, and contrary to the public interest. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), it has been determined that good cause exists for dispensing with a delayed effective date.

E.O. 12291

Inasmuch as Customs does not believe that the amendment meets the criteria for a "major rule" within the meaning of section

1(b) of E.O. 12291, a regulatory impact analysis has not been prepared.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601-612) are inapplicable. However, any comments submitted with regard to the economic impact of this regulation will be considered before a final rule is issued.

Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from the Departments of Commerce and Interior and other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports.

Amendments to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended by adding a new center heading and new section 10.181 to read as follows:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Watches and Watch Movements From U.S. Insular Possessions

10.181 Watches and Watch Movements from U.S. insular possessions.

(a) The issuance of an International Trade Administration Form ITA-360, Certificate of Entitlement to Secure the Refund of Duties on Watches and Watch Movements, by the Department of Commerce, authorizes a producer of watches in the U.S. insular possessions to file requests with Customs for the refund of duties paid on imports of watches, watch movements, (including solid state watches and watch movements) and watch parts (excepting separate watch cases and any articles containing any materials to which rates of duty set forth in Column 2, Tariff Schedules of the United States (19 U.S.C. 1202) apply). The amount of the refund requested may be up to the value specified in the certificate, provided that the articles for which refunds are requested were entered during a 3-year period beginning 2 years before the date of issuance of the Form ITA-360 certificate from the Department of Commerce.

(b) The Form ITA-360 may not be used to secure refunds. To secure a refund, the party requesting the refund of duties (claimant) must present to Customs Form ITA-361, Request for Refund of Duties on Watches and Watch Movements, properly executed, and authenticated by Department of Commerce.

(c) By completing Form ITA-361, the insular producer may either:

(1) Transfer its entitlement, in whole or in part, to any other party for any consideration agreed to by the insular producer and the transferee, or

(2) Request the refund of duties to itself.

(d) A claimant must file Form ITA-361 with Customs at the same port where the watch import entry was originally filed and duties paid. The documentation accompanying Form ITA-361 shall include a copy of the import entry, providing proof that duty was paid on the watches and watch movements.

(e) When requesting the refund of duties on Form ITA-361, the claimant also must complete and submit to Customs the declaration on the form which reads as follows:

> "I declare that the information given above is true and correct to the best of my knowledge and belief; that no notices of exportation of articles with benefit of drawback were filed upon exportation of this merchandise from the United States; that no liquidated refunds on the articles relating to the present claim have been paid; and that no protest or request for litigation for refund of duties paid and herewith claimed has been made."

(f) A fee of 5 percent will be deducted from each refund request as reimbursement to salaries and expenses of those Customs personnel processing the request.

(g) Form ITA-360 expires 1 year from its date of issuance. Any refund request on Form ITA-361 made by either the insular producer itself or any transferee named on Form ITA-360 must be filed within this 1-year period. This expiration date applies equally to all refund requests, whether a single request for the entire amount specified in the Form ITA-360 certificate or multiple requests for partial amounts. Refund requests will be accepted until either the amount specified in the certificate is depleted or until the certificate expires 1 year from its date of issuance.

(h) Customs will process only those refund requests made in accordance with the joint rules of the Department of Commerce and the Interior governing the issuance and handling of certificates and the transfer of entitlements as contained in 15 CFR Part 303.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14 (5 U.S.C. 301, 19 U.S.C. 66, 1202, 1624 (Gen. Hdnte. 11, TSUS)))

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: December 14, 1983.
JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, January 12, 1984 (49 FR 1480)]

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19 CFR Part 10

(T.D. 84-17)

Elimination of Duty on Articles Imported for Physically or Mentally Handicapped Persons

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim Regulation.

SUMMARY: This document amends the Customs Regulations to provide a procedure for the duty-free treatment of imported articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons. Many articles for the blind, and some for other handicapped individuals, already are entitled to duty-free entry under existing law. This document describes a new law which expands coverage to encompass most articles specially designed or adapted for use by the handicapped other than articles solely for the blind.

EFFECTIVE DATE: January 12, 1984.

COMMENTS: Because the statute upon which this regulation is based became effective on February 11, 1983, the amendment is being published as an interim regulation, effective on (the date of publication in the Federal Register). However, written comments received by Customs before (60 days from the date of publication) will be considered in determining whether any changes to the regulation are required before a final rule is published.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Herbert Geller, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5307) or Richard Seppa or Frank Creel, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230 (202-377-1660).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Agreement on the Importation of Educational, Scientific and Cultural Materials, known as the Florence Agreement, is an international agreement providing for duty-free trade among its 90 signatories in specified categories of articles. These categories are: (1) books, publications, and documents; (2) works of art and collector's pieces; (3) visual and auditory materials; (4) scientific instruments and apparatus; and (5) articles for the blind.

A Protocol to the Florence Agreement, enacted into law as Pub. L. 97-446 and known as the Nairobi Protocol, broadens the scope of the Florence Agreement by removing some of its restrictions on articles otherwise entitled to duty-free status, and by expanding the Agreement to embrace technologically new articles and previously uncovered works of art and film. One major new category of articles is all materials specially designed for the education, employment, and social advancement of physically or mentally handicapped persons. Thus, the Protocol is intended to afford duty-free treatment for articles not only for the blind, but for all other handicapped persons without regard to the source of their affliction.

Many articles for the blind, and some for other handicapped individuals, already are entitled to duty-free entry under existing statutes. The Protocol expands coverage to encompass most articles specially designed or adapted for use by other handicapped individuals. Consequently, Part 4 of Schedule 9, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), has been amended by inserting item numbers 960.10, 960.12, and 960.15, "Articles Specially Designed or Adapted for the Use or Benefit of the Blind or other Physically or Mentally Handicapped Persons." Part 4, TSUS, headnotes and item numbers 960.10, 960.12, and 960.15, TSUS, provide as follows:

Part 4 Headnote:

1. An article described in any of the provisions of this part, if entered during the period specified in the last column, is classifiable in said provision, if the conditions and requirements thereof and of any applicable regulations are met. The provisions of this part shall prevail over any provision describing such article in schedules 1 to 8, inclusive.

2. For the purposes of items 960.10, 960.12, and 960.15—

(a) The term *"physically or mentally handicapped persons"* includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(b) These items do not cover—

(i) articles for acute or transient disability;

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(ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled;
(iii) therapeutic and diagnostic articles; and
(iv) medicines or drugs.

Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons (however provided for in schedules 1 to 7):

Articles for the blind:

960.10 Books, music, and pamphlets, in raised print, used exclusively by or for them.

960.12 Braille tablets, cubarithms, and special apparatus, machines, presses, and types for their use or benefit exclusively.

960.15 Other.

The articles added by these new provisions became eligible for duty-free treatment for the period beginning February 11, 1983, and ending August 11, 1985. During this period, the policy of treating these articles as duty-free will be reviewed by the President. Instructions regarding the duty-free treatment of these articles have already been issued to Customs field officers by memoranda dated February 22, 1983, and July 13, 1983. Articles have been entered duty-free under this new policy since February 11, 1983. However, it is noted that item numbers 826.10 and 826.20, TSUS, already provide permanent duty-free treatment for those articles covered by the new provisions 960.10 and 960.12, TSUS, on a temporary basis. Therefore, there is no time limit applicable to duty-free treatment of these particular articles.

Pursuant to the authority in section 165 of Pub. L. 97-446, this document amends Part 10, Customs Regulations, (19 CFR Part 10), to provide a procedure for the duty-free treatment of articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons other than articles solely for the blind. Therefore, the interim regulations proposed in this document apply only to articles covered under item 960.15, TSUS.

Those articles claimed under item 960.15, TSUS, may be admitted duty-free by Customs with the entry summary or with the entry when the entry summary is filed at the time of entry, upon the submission of a Department of Commerce International Trade Administration Form ITA-362P, "Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty under Pub. L. 97-446 (other than Articles for the Blind)", providing specified information about the articles to be imported.

The requirement for the Form ITA-362P is limited to articles entered under item 960.15, TSUS. This form may not be treated, in accordance with section 141.66 (19 CFR 141.66), as a missing document. A bond may not be given to Customs for the production of this form at the time of entry. This prohibition fulfills the requirements of the implementing legislation to monitor the articles' entry. The Form ITA-362P must be presented at the time entry summary is filed following release of the articles. A duty-free entry

summary will be rejected and appropriate estimated duties required if Form ITA–362P is not presented at the time of entry summary filing.

In accordance with the intent of the legislation, an insignificant adaptation would not result in duty-free treatment for a relatively expensive article. Otherwise, this special tariff category would create incentives for commercially motivated tariff-avoidance schemes and pre-import and post-entry manipulation. Rather, for an entire modified article to be accorded duty-free treatment, the modification or adaptation must be significant, so as to render the article clearly for use by handicapped persons. Whether a modification is significant will depend on Customs' consideration of such criteria as the relative cost and permanence of the adaptation and the degree to which the imported article with the adaptation is dedicated to use by the handicapped. For example, an automobile fitted with special hydraulic seats and modified to be operated primarily with hand controls would not be used under normal circumstances by the non-handicapped, and such a modification represents a considerable expense to the user. This special automobile would qualify for duty-free treatment. On the other hand, special attachments to permit a handicapped individual to operate the foot brake or gas pedal of an otherwise conventional automobile are inexpensive modifications relative to the cost of the automobile and can be readily removed after importation. This type of adaptation is insufficient to alter the basic character of the conventional automobile and render it eligible for duty-free entry. (The part used in the modification, though, might qualify if the modified part is entered separately.)

Customs cannot in this document answer all questions concerning this matter. Such questions should be submitted to the Director, Entry, Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, in accordance with the ruling procedures set forth in Part 177, Customs Regulations (19 CFR Part 177).

This document amends Part 10, Customs Regulations (19 CFR Part 10), by adding a new section 10.182 to provide a procedure to secure the duty-free entry of certain articles for physically or mentally handicapped persons other than articles solely for the blind.

COMMENTS

Before adopting the regulation as a final rule, Customs will give consideration to any written comments (preferably in triplicate) timely submitted to the Commissioner. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Inapplicability of Notice and Delayed Effective Date Provisions

The Department of State listed the Nairobi Protocol as one of the few international agreements for which there is an urgent need. The Protocol will serve to promote a freer exchange of ideas and cultural articles and foster greater international understanding and peace, while benefitting handicapped individuals. Therefore, it has been determined that, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are impracticable, unnecessary, and contrary to the public interest. For the same reasons a delayed effective date is being dispensed with, pursuant to 5 U.S.C. 553(d)(3).

E.O. 12291 and Regulatory Flexibility Act

Because the amendment does not meet the criteria for a "major rule" within the meaning of section 1(b) of E.O. 12291, Customs has not prepared a regulatory impact analysis.

Because of the need to expedite the issuance of this regulation, Customs has not yet been able to determine if the regulation will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601–612). However, Customs will continue to review this matter and will consider any comments submitted before issuing a final rule.

Paperwork Reduction Act

The International Trade Administration, U.S. Department of Commerce, submitted Form ITA–362P, the form used to request duty-free treatment for articles specially designed or adapted for use by the handicapped, to the Office of Management and Budget for approval. Form ITA–362P was approved and its OMB approval number is 0625–0118, which expires March 31, 1985.

Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from the Department of Commerce and other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended by adding a new center heading and new section 10.182 to read as follows:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Articles Specifically Designed or Adapted for Use by Handicapped Persons Other Than Articles Solely for the Blind

10.182 Articles Specially Designed or Adapted for Use by Handicapped Persons other than Articles Solely for the Blind.

(a) Articles specially designed or adapted for use by handicapped persons other than articles solely for the blind claimed to be entitled to free entry under temporary tariff item 960.15, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), may be admitted free of duty by Customs upon the submission of an International Trade Administration Form ITA-362P, "Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty under Pub. L. 97-446 (other than Articles for the Blind)," providing specified information about the articles to be imported.

(b) The requirement for the Form ITA-362P is limited to merchandise entered under item 960.15, TSUS. This form may not be treated, in accordance with section 141.66 (19 CFR 141.66), as a missing document. A bond may not be given to Customs for the production of this form at the time of entry. The Form ITA-362P must be presented with the entry summary or with the entry when the entry summary is filed at the time of entry. A duty-free entry summary will be rejected and appropriate estimated duties required if Form ITA-362P is not presented at the time of entry summary filing. The effective period for duty-free treatment of these articles extends until August 11, 1985, unless extended by the President. (R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14 (5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnt. 11), 1624))

William Green,
Acting Commissioner of Customs.

Approved: December 21, 1983.
John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, January 12, 1984 (49 FR 1482)]

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19 CFR Parts 134, 148, 162, 171, 172

(T.D. 84-18)

Customs Regulations Amendments Relating to Penalties and Penalties Procedures

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to penalties and penalties procedures. The document: (a) adds the revised penalty guidelines relating to 19 U.S.C. 1592 as an appendix to Part 171, Customs Regulations (19 CFR 171); (b) clarifies the requirements and criteria applicable to prior disclosures of violations of 19 U.S.C. 1592; (c) places a limitation on the number of supplemental petitions requesting relief from fines, penalties, and forfeitures and from liquidated damages claims; and (d) makes certain other minor, technical changes to the Customs Regulations.

The amendments are necessary in view of legislative and procedural changes relating to Customs fines, penalties, and forfeitures program.

EFFECTIVE DATE: February 13, 1984.

FOR FURTHER INFORMATION CONTACT: Edward T. Rosse, Chief, Commercial Fraud and Negligence Penalties Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8317).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), provides for penalties and penalties procedures when by fraud, gross negligence or negligence, merchandise is entered, introduced, or attempted to be entered or introduced into the commerce of the United States, by means of any document, written or oral statement, or act, which is material and false, or by means of any material omission; or when a person aids or abets any other person in the entry, introduction, or attempted entry or introduction of merchandise by such means. Section 618, Tariff Act of 1930, as amended (19 U.S.C.A 1618), provides for the remission or mitigation of fines, penalties, and forfeitures by the Secretary of the Treasury.

Public Law 95-410, the "Customs Procedural Reform and Simplification Act of 1978," amended 19 U.S.C. 1592. As a result of changes made by Pub. L. 95-410, and as a result of a consideration of its fines, penalties, and forfeitures program, the Customs Service believes that changes in its regulations are necessary.

This document amends the Customs Regulations by (a) adding the revised penalty guidelines relating to 19 U.S.C. 1592 as an appendix to Part 171, Customs Regulations (19 CFR 171); (b) clarifying the requirements and criteria applicable to prior disclosures of violations of 19 U.S.C. 1592; (c) placing a limitation on the number of supplemental petitions requesting relief from fines, penalties, and forfeitures and from liquidated damages claims; and (d) making certain other minor, technical changes to the Customs Regulations.

These changes were proposed in a notice published in the Federal Register on November 3, 1982 (47 FR 49853). Approximately 40 comments were received in response to the notice.

DISCUSSION OF COMMENTS AND FORMULATION OF FINAL RULES

1. Revised Penalty Guidelines

A. THE GUIDELINES AS APPENDIX TO THE REGULATIONS

Several commenters object to the status of the guidelines as an appendix to the regulations. They contend that since the guidelines are substantive, they should appear as regulations subject to formal rule making procedure.

Customs does not consider the guidelines to be formal regulations; they are for instruction and guidance to Customs field officers. Customs is including the guidelines as an appendix to the regulations merely to advise the public of them.

B. DEFINITIONS

Several commenters request clarification of the term "unfair trade practice" under paragraph (A) of the guidelines. Language is being added to expand upon the unfair trade practice concept by stating "unfair trade practice under the antidumping, countervailing duty or a similar statute or an unfair act involving patent or copyright infringement."

Numerous commenters object to the definition of negligence in paragraph (B)(1) of the guidelines, contending that the language "reasonable care and competence expected from a person in the same circumstances" is a drastic departure from the standard definition of negligence. They state that inequitable results will occur if a greater degree of care is expected from an experienced importer. The commenters object to including in the definition of negligence the language "communicating information so that it may be understood by the recipient" because it is unfair to make the importer responsible for the competency of the Customs officers receiving the information.

Customs has chosen the language comprising the definition of negligence from the Restatement (Second) of Torts, section 552, comment b, which applies to the obligations of suppliers of information. According to the Restatement, a supplier of information, in order to fulfill the expected standard of care, must exercise the competence reasonably expected of one in the same circumstances.

Therefore, experienced importers may be reasonably expected to exercise a higher degree of competence in ascertaining the facts stated in entry documents than the business novice or inexperienced importer. Similarly, in order to fulfill the standard of care, the information supplied must not be communicated in such a

manner that it is misleading. This definition imposes only a reasonable standard of care and does not, as the commenters suggest, make the importer a guarantor of the interpretation or understanding of the information presented.

The commenters state that the definitions of negligence and gross negligence use, but do not explain, the words "the offender's obligations under the statute."

Customs believes that 19 U.S.C. 1592 clearly states a party's obligation pursuant to that statute, and that it is unnecessary to restate that obligation in the guidelines.

One of the commenters suggests that the language "violate the laws of the United States" in the definitions of gross negligence and fraud be expanded to read "violate the laws of the United States related to the entry or introduction or attempted entry or introduction of merchandise into the commerce of the United States."

Customs believes that the suggested expansion of this language is inappropriate since a false statement or omission may relate to an offender's obligations under laws of the United States other than the laws related exclusively to entry or introduction of merchandise, e.g., laws prohibiting possession or use of certain articles in the United States, such as controlled substances, automobiles which fail to meet safety or emission standards, etc.

With respect to the definition of fraud, Customs has deleted the word "demonstrable" and inserted the words "as established by clear and convincing evidence." This change is being made to have the guidelines parallel 19 U.S.C. 1592(e)(2) which states that in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty under 19 U.S.C. 1592 based upon fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence.

C. ASSESSMENT OF PENALTIES

Clarification is requested by commenters who claim that the Customs field officer is not specifically authorized by the guidelines to evaluate mitigating factors in setting the amount in the pre-penalty notice.

In the proposal, Customs stated that the guidelines would instruct field officers to consider mitigating, aggravating and extraordinary factors in assessing a claim for monetary penalty. To ensure that field officers are aware of this policy, that instruction is being inserted in paragraph (C)(1)(b) of the guidelines, which directs field officers to consider mitigating, aggravating and extraordinary factors in issuing a pre-penalty notice in cases involving gross negligence and negligence. With respect to a penalty based on fraud, the amount in the pre-penalty and penalty notices shall be the domestic value of the merchandise. Language is also being added to the

introductory paragraph preceding paragraph (A) of the guidelines to clarify that the assessed or mitigated penalty amount determined in accordance with the guidelines does not limit the penalty amount which the Government may seek in bringing civil enforcement action pursuant to 19 U.S.C. 1592(e).

Two commenters find fault with what they perceive to be an approach to assessment of penalties based on the fact that some violations may be less serious then others. They point out that the "seriousness" of a violation should not depend upon the amount of the loss of revenue. One commenter calls this approach inappropriate inasmuch as the statute creates its own criteria of seriousness by establishing degrees of culpability. Several commenters remark that fixed sum penalty amounts for non-serious violations should never exceed statutory maximums or the ranges set forth by the guidelines, and that the guidelines fail to reflect this rule. A number of commenters point out that the examples provided in the guidelines for non-serious violations are not even violations because the falsities are not material. Customs believes that the amount of the loss of revenue is a factor to be considered along with other factors in determining a penalty amount within the range of penalty amounts appropriate to the degree of culpability. The provisions in paragraph (C)(1)(b) are intended to indicate several factors affecting the gravity of violations for general guidance in determining the amount of the penalty claim. We do not believe that these provisions can be interpreted as requiring an unreasonable categorization of violations. Language is being added to paragraph (C)(1)(c) to indicate that fixed sum penalty amounts for certain violations should not exceed either the statutory maximums or the maximums set forth in the guidelines, and to indicate that the falsities cited as examples must be material, as defined in the guidelines.

With respect to paragraph (C)(2) of the guidelines, commenters recommend that a loss of revenue of $1,000, rather than $500, be the threshold for the initiation of a penalty case, and that a penalty assessment be discretionary with the district director if the loss of revenue is between $1,000 and $5,000. One commenter suggests that Customs add language stating that, in a case involving a prior disclosure, the district director has the discretion whether or not to issue a penalty notice. A commenter states that it is illegal to set a higher degree of culpability in the penalty notice merely because the statute of limitations will expire within 3 months, and that a penalty notice should always state why the case is continuing, or the basis for not accepting the petitioner's arguments. One commenter recommends that the phrase of paragraph (C)(2)(a) "and in consideration of issuance of the penalty notice" be changed to "and in consideration whether or not to issue a penalty notice."

Customs believes that the threshold amount of a $500 loss of revenue for initiation of a penalty case is consistent with and necessary to Customs obligation to enforce the statute and deter future

violations. The language in paragraph (C)(2)(c) is being amended to provide that a penalty case shall not be initiated in cases involving: (a) a prior disclosure of a violation resultant from gross negligence or negligence; and (b) either no actual loss of revenue to the Government, or an actual loss of revenue resulting in interest due under 19 U.S.C. 1592(c)(4) which is less than $500, provided that the actual loss of revenue has been tendered to Customs. Criteria limiting penalties for violation of 19 U.S.C. 1592 by arriving travelers are contained in paragraph (J)(2) of the guidelines.

Customs believes that the provision for reissuance or amendment of outstanding penalty claims, if the evidence substantiates a higher degree of culpability, is reasonable and not contrary to any statutory provision. Customs further believes that under 19 U.S.C. 1592(b)(2), a penalty claim need only specify all changes in the information provided in the pre-penalty notice. There is no requirement that the penalty notice adddress arguments made in response to the prepenalty notice. It is clear that Congress intended that such findings be provided only in response to a petition for relief.

The recommended language change to paragraph (C)(2)(a) is being adopted.

D. RANGES OF MITIGATION

The commenters criticize the disposition ranges in paragraph (D) of the guidelines as being too high, especially in non-revenue-loss cases. They criticize the dispositions in prior disclosure cases in paragraph (E) because mitigation is not permitted below the statutory maximums.

Customs believes that the disposition ranges in paragraph (D) are consistent with customs enforcement objectives and also allow substantial relief from penalty claims. Relief below the stated ranges is permitted in cases involving a prior disclosure (paragraph (E)), cases where extraordinary factors are present (paragraph (H)), and cases where a fixed sum penalty is appropriate (paragraph (C)(1)(c)). Customs does not believe that the penalties collected upon the disposition of prior disclosure cases are excessive. In a prior disclosure case in which the violation is due to negligence or gross negligence, and there is no loss of revenue or the loss of revenue is potential, no penalty is collected.

E. MITIGATING FACTORS

Several commenters urge that contributory Customs error, which includes misleading or erroneous Customs advice, should be grounds for cancellation of a penalty case rather than merely a mitigating factor. They urge that the mitigating factor of cooperation with the investigation should include providing books and records, notwithstanding 19 U.S.C. 1508, which requires the maintenance of books and records, because the Government is saved the effort of procuring a subpoena. One commenter believes that the

mitigating factor of immediate remedial action should include the payment of the actual loss of revenue after issuance of a penalty notice as long as it is made within 30 days of the determination of duties owed. Commenters also believe that prior good record and inexperience in importing should bear upon the level of culpability, and that prior good record should mitigate a fraud violation.

With respect to contributory Customs error, the guidelines are being amended to state that if it is determined that the Customs error was the sole cause of the violation, the penalty will be cancelled. If the Customs error contributed to the violation but the violator is nevertheless culpable, the error will be considered as a mitigating factor. Concerning cooperation, Customs believes that the fact that the Government may be saved the effort of procuring a subpoena does not warrant a provision that the act of supplying books and records should be considered as a mitigating factor.

Concerning the payment of the actual loss of revenue, section 162.79(b)(2), Customs Regulations (19 CFR 162.79(b)(2)), in implementing 19 U.S.C. 1592(d), provides that the amount of the actual loss of revenue shall be stated in the penalty notice and that payment or arrangements therefor shall be made within 30 days of the date of the notice. Customs does not believe that compliance with this provision should be regarded as a mitigating factor. With respect to culpability, the existence of a prior good record is not relevant to a determination as to whether the offender's violations with respect to subsequent importations were due to negligence, gross negligence or fraud, and this factor cannot, in any case, be found to mitigate a fraudulent violation of the statute. Similarly, Customs believes that although experience in importing may be considered in determining the competence reasonably to be expected of an importer, this aspect of experience or inexperience is separate and distinct from considerations affecting mitigation.

F. AGGRAVATING FACTORS

Two commenters contend that obstructing the investigation, withholding evidence, and providing misleading information should be considered aggravating factors only if they were intentional. Other commenters believe that aggravating factors should only be considered if Customs Headquarters concurs.

Customs believes that the provision for aggravating factors is sufficient for their application in appropriate circumstances without requiring a specific finding of intent, and that there is no demonstrable need for Customs Headquarters concurrence in a finding by Customs field officers that these factors are present.

G. EXTRAORDINARY FACTORS

One commenter contends that Customs knowledge of a violation should preclude the assessment of any penalty in a non-fraud case where Customs failure to notify the violator is a dereliction of duty.

Another commenter proposes that substantial delay in the investigation attributable to the violator should not preclude application of this factor because the import specialist should be apprised of the error and can control the entries.

Customs does not believe that the fact that Customs failed to notify a violator concerning Customs knowledge of the violation can, under any circumstance, warrant cancellation or full remission of the penalty. Denial of the application of this factor when a substantial delay in the investigation is attributable to the violator is based on the premise that Customs is not in a position to provide the violator with information concerning a violation until the matter has been investigated.

H. CUSTOMHOUSE BROKERS

A commenter criticizes that part of the guidelines which subjects to full penalty liability customhouse brokers who commit a grossly negligent violation of 19 U.S.C. 1592, whether or not the broker shared in the financial benefits of the violation over and above the prevailing brokerage fees. Customs has decided to strike this proposed departure from present practice and maintain its penalty limit of $500 in such a situation. Grossly negligent brokers who do share in the financial benefits of a violation will not be protected by the $500 limit.

The same commenter also criticizes the fact that the guidelines depart from previous practice in that they do not include language which shields an innocent broker who files an entry as the importer of record from liability for the actual loss of revenue on liquidated entries. Customs has already ruled (Headquarters decision dated September 8, 1982, file No. 213792) that an innocent broker filing an entry as importer of record is liable under 19 U.S.C. 1592(d) for any actual loss of revenue. By filing an entry as importer of record, i.e., using its own bond rather than its client's bond, the broker assumes the responsibility and risk not only for any increased duties found to be due on unliquidated entries, but for the actual loss of revenue on liquidated duties as well.

I. ARRIVING TRAVELERS

Commenters have noticed that the guidelines providing for special limitations on liability for first-offense, non-commercial, fraudulent violations by arriving travelers, do not provide for non-revenue-loss cases. Language indicating a range of penalty amounts for non-revenue-loss cases is being added. In addition, paragraph (J)(2)(b) is being revised to state certain circumstances with respect to both revenue-loss and non-revenue-loss cases where a penalty case shall not be initiated.

2. Prior Disclosure

A. WRITING REQUIREMENT

Numerous commenters object to the requirement of proposed section 162.74(a), Customs Regulations (19 CFR 162.74(a)), that a prior disclosure be in writing. They contend that 19 U.S.C. 1592(c)(4) does not authorize the imposition of formal requirements concerning the manner in which a prior disclosure must be made, and that the writing requirement would be prejudicial to inexperienced importers who may be unaware of the requirement.

Customs believes that it is implicit from the provisions of 19 U.S.C. 1592(c)(4) that the Secretary of the Treasury shall issue regulations which set forth the procedures for prior disclosure in order to ensure that the facts concerning the date, time, and contents of the disclosure are established in the record. Further, under 19 U.S.C. 1624, the Secretary is authorized to issue rules and regulations as may be necessary to carry out the provisions of 19 U.S.C. 1592(c)(4). The requirement that a prior disclosure must be in writing is reasonably related to the necessity to establish the date, time and contents of the purported prior disclosure.

In paragraph (H)(2) of the proposed guidelines it was stated that additional relief from a penalty will be granted if a person discloses the circumstances of a violation by providing evidence or information which is not in Customs possession or knowledge and/or which had not been requested by a Customs officer, although the disclosure does not meet the requirements for a prior disclosure in section 162.74, Customs Regulations (19 CFR 162.74). After further consideration, Customs has concluded that a person should be accorded the full benefit of prior disclosure treatment if the person provides information to Customs with respect to a violation of 19 U.S.C. 1592 which does not meet the requirement of a written disclosure statement if the district director is satisfied that: (1) the information was provided before or without knowledge of the commencement of a formal investigation; and (2) the information provided substantially comprises the information specified in section 162.71(e). This information need not be in writing. This amendment is stated in section 162.74(a)(2). Paragraph (H)(2) of the proposed guidelines is deleted.

B. TIME OF DISCLOSURE

Numerous commenters believe that the time of disclosure, as specified in section 162.74(b), should be the time of mailing, not the time of receipt, in order to conform with standard notice procedure. They contend that the regulation should obligate the Customs officer to give a receipt, rather than obligate the disclosing party to ask for a receipt. It is also recommended that the term "documents" be replaced with "the written statements provided for in section 162.71(e)." One commenter believes that the certified mail

requirement is unreasonable because it may invalidate certain disclosures even when the fact of disclosure is conclusively established. Because the burden is upon the importer to prove disclosure, it is contended that the certified mail rule should be optional.

Customs has revised the proposed language of section 162.74(b) to provide that if the disclosing documents are sent by certified mail, return-receipt requested, and if they are received by Customs, the time of mailing shall be deemed to be the time of disclosure. If the documents are sent otherwise by mail or are delivered in person, the time of receipt by Customs shall be deemed to be the time of disclosure. Upon request, Customs will provide a receipt stating the time and date of receipt. The provision of information which is not in writing but which qualifies for prior disclosure treatment shall be deemed to have occurred at the time Customs was provided with information which substantially complies with the requirements of section 162.71(e).

C. DISCLOSES THE CIRCUMSTANCES OF THE VIOLATION

Commenters object to proposed section 162.71(e)(4) because the disclosing party may not possess, at the time of the disclosure, "the true and accurate information or data which should have been provided in the entry documents." Customs has decided to add to this language "and agrees to provide any information or data which is unknown at the time of disclosure within 30 days of the initial disclosure date or within an extension of such 30-day period as the district director may permit in order for the person to obtain the information or data."

D. REFERRAL FOR INVESTIGATION

Commenters criticize the district director's obligation, pursuant to section 162.74(c), to refer any disclosure of a violation to the field office of the Office of Investigations as an unnecessary duplication of effort on Customs part inasmuch as an importer's disclosure should be presumed to be accurate and complete. One commenter suggests that such referral should be within the discretion of the district director. Two commenters have recommended that this section be merged with section 162.74(j), which provides for non-referral of minor violations.

Customs does not agree that determinations concerning the validity of a prior disclosure can be based solely on a presumption that the disclosure is complete and accurate. This provision is not intended to preclude a determination by the district director that referral is unnecessary because a minor violation is involved within the purview of 162.74(j), or a determination, normally after consultation with the Office of Investigations, that commencement of a formal investigation is not necessary in the circumstances of the particular disclosure.

E. COMMENCEMENT AND EXPANSION OF A FORMAL INVESTIGATION

Commenters object to the provisions in section 162.71 (d) and (e) that "contemporaneous notes" in the investigatory record may establish the date of commencement or expansion of a formal investigation. Commenters stress that "contemporaneous notes" should not stand on the same footing as a Memorandum of Information Received (MOIR) or an entry in a formal investigative record. They contend that more formal documentation is needed, such as the filing of an MOIR or the assignment of a file number. Customs disagrees. Whether a formal investigation has been commenced or expanded is not dependent upon the means for recording the fact, e.g., the preparation of an MOIR or assignment of a file number. More determinative of the commencement of an investigation of a specific violation is whether the investigatory record shows that information was received which would cause an investigative agent to believe that the possibility of a violation of 19 U.S.C. 1592 existed. We do not believe that in any such instance the actions of the agent in investigating the information can be regarded as routine.

Commenters also criticize the provisions in section 162.71 (d) and (e) that an agent's inquiry concerning the type of or circumstances of the violation will commence or expand an investigation. They contend that routine inquiries should be distinguished from formal investigations, and that routine inquiries should not preclude a subsequent prior disclosure. One commenter states that a request for books and records must precede a determination that a formal investigation should commence based upon those books and records. Customs believes that the act of a Customs investigative agent in making an inquiry concerning the type of or circumstances of a violation or in requesting specific books and records cannot be considered routine, and that such an inquiry or request is sufficient to inform a party that an investigation have been commenced or has expanded.

F. PROOF OF LACK OF KNOWLEDGE

With respect to the language of proposed section 162.74(f), commenters contend that the imputation of knowledge of commencement of an investigation due to an agent's inquiry or request for books and records creates an irrebuttable presumption that is contrary to the actual knowledge test of the statute. One commenter suggests that the presumption be rebuttable. Another commenter suggests that the time period of proposed section 162.74(f) be changed from three years to one year.

Customs has determined to change the language of this section to provide that the presumption of knowledge created by an agent's inquiry or request for books and records may be rebutted by evidence that, notwithstanding the inquiry or request, the person did not have knowledge that an investigation had commenced with re-

spect to the disclosed violation. Additionally, Customs has decided to delete the three-year time period from section 162.74(f); the time of the agent's inquiry or request is only one factor to be considered in determining whether the person had knowledge of the commencement of the investigation.

G. PENALTY CLAIMS NOT REQUIRING FORMAL INVESTIGATION

One commenter suggests that section 162.74(g) make clear that a prior disclosure may occur up until the time of any of the acts of sub-paragraphs (1) through (4). Another commenter believes that a prior disclosure should be foreclosed on the date recorded in writing by an officer who discovered facts and circumstances relied upon by an authorized officer to determine that a penalty will be issued without formal investigation.

Customs believes that the language of proposed section 162.74(g) is sufficiently clear in stating that a prior disclosure may be made at any time before the appropriate Customs officer's determination that available evidence warrants issuance of the penalty claim. The officer's evaluation of the evidence and his further action in this regard are determinative. This situation is not analogous to that where Customs is merely commencing a formal investigation and, therefore, notice to the person is not necessary to preclude a prior disclosure. Secondly, the decision and action of the Customs officer, not the discovery of the evidence leading to the decision, preclude the subsequent prior disclosure. Language is being added to proposed section 162.74(g)(3) to indicate that determinations by Customs officers of possible violations without formal investigation may also be made as the result of the inspection of commercial merchandise in connection with entry.

3. Supplemental Petitions

A. LIMIT OF TWO SUPPLEMENTAL PETITIONS

Commenters contend that the limit of two supplemental petitions in proposed sections 171.33(c) and 172.33(c) represents an arbitrary cut-off of the administrative review process and that no limit should be set, especially where the penalty amount has been paid.

Commenters identify certain circumstances which should always warrant further review, i.e., (1) where the supplemental petition responds to a new issue of law or fact which the initial decision failed to identify; (2) where counsel has been retained for the first time; (3) where additional information has been obtained through Freedom of Information Act procedures; and (4) where a favorable court decision has been rendered with respect to related entries, or unrelated entries if the issues are the same (in which case the 60-day limit of proposed sections 171.33(c)(2)(ii) and 172.33(c)(2)(ii) is criticized as too short). Commenters also state that the term "second

supplemental petition" should not include an offer in compromise pursuant to 19 U.S.C. 1617.

Customs believes that the mitigation process under the regulations and revised penalty guidelines provides ample opportunity for oral and written presentations by any party involved in a penalty proceeding, and ample opportunity for administrative review throughout the various stages of the proceeding. Any person to whom a pre-penalty notice is issued may make a written and an oral presentation as to why a penalty notice should not be issued. In determining whether to issue a penalty notice, and, if so, the amount of the penalty, the district director is to consider oral and written presentations made by the alleged violator, all available evidence with respect to the existence of material false statements or omissions, the degree of culpability, the existence of a prior disclosure, the seriousness of the violation, and the existence of mitigating, aggravating or extraordinary factors. Subsequent to the issuance of a penalty notice, the alleged violator may make a written and an oral presentation, and will receive a written decision which includes findings of fact and conclusions of law. If the alleged violator is not satisfied with that decision, a supplemental petition may be filed, additional presentations made, and an additional written decision will be issued. The petitioning party can also request that a supplemental petition be treated as an appeal to the Secretary of the Treasury.

As stated previously, Customs believes that these procedures provide ample opportunity for review of all aspects of the penalty case. If matters such as new information or new legal or factual issues arise, or new counsel is retained, the petitioner can receive yet another hearing either through a second supplemental petition, after payment of the penalty and actual loss of revenue, or by declining to pay and pursuing the matter with the Department of Justice after the case is referred to that agency by Customs. Customs believes that it is in the interest of the efficient administration of the penalty process that, for the purpose of sections 171.33(c) and 172.33(c), the term "second supplemental petition" includes an offer in compromise under 19 U.S.C. 1617. In making an offer of compromise, however, only the amount of the offer must be deposited (see 19 CFR 161.5(b)).

B. PAYMENT PREREQUISITE TO SECOND SUPPLEMENTAL PETITION

Commenters criticize the requirement of proposed sections 171.33(c)(1) and 172.33(c)(1) that a second supplemental petition will not be accepted unless it is accompanied or preceded by full payment of all penalties and withheld duties determined to be due in the decision rendered on the first supplemental petition. They contend that prepayment will serve as a disincentive for Customs to seriously consider further submissions. The commenters further state that since payment of the penalty may be considered volun-

tary under *Carlingswitch, Inc.* v. *United States,* 651 F.2d 768 (C.C.P.A. 1981), and not a protestable "charge or exaction" under 19 U.S.C. 1514(a)(3), judicial review may be foreclosed since the Court of International Trade has no jurisdiction over a case brought by a petitioner to review a penalty.

Customs does not believe that there is any basis for the conclusion that Customs will fail to give meaningful consideration to supplemental petitions after the penalty and withheld duties are paid. In the pre-penalty stage of the case, the petitioner is afforded the opportunity to discuss all issues in the case with the field officers involved, and in any decision on the initial petition or first supplemental petition, Customs is required to state the findings of law and fact upon which the decision is based. The number of cases in which all significant issues will not be addressed before the penalty must be paid will be minimal and the possibilities suggested by commenters do not justify further delays in collection of the mitigated claim by the Government.

The *Carlingswitch* case concerned a voluntary payment of withheld duties. Thus, that decision will not affect Customs policy, pursuant to 19 U.S.C. 1520(a)(3), of refunding penalty amounts which are subsequently determined to be excessive. While it may be true that judicial review may be precluded if a petitioner files a second supplemental petition after payment of a penalty, and further relief is denied by Customs, Customs believes that the penalty process gives a petitioner adequate opportunity for review. If the petitioner wants to ensure judicial review, it can decline to pay the mitigated penalty after the first supplemental petition.

The notice stated that nothing in the proposed amendments should be construed as limiting or precluding the opportunity afforded under Treasury Order 219–2, published in the Federal Register on February 25, 1976 (47 FR 8192), to seek an appeal to the Secretary of the Treasury. Customs has decided to include the provisions of Treasury Order 219–2 in new section 171.33(d).

4. Internal Advice Requests

One commenter suggests, with respect to proposed section 162.78(b), that internal advice requests be prohibited during a pending penalty case inasmuch as advice from Headquarters on a classification or value issue may delay the penalty case and circumvent the district director's authority.

Customs does not believe that there is demonstrable evidence that adoption of this provision would cause substantial delays or circumvention of the district director's authority to proceed with the penalty case which would outweigh Customs interest in resolving complex legal issues at an early stage in the penalty proceeding. In connection with an internal advice request, a district director may indicate why he believes that consideration of a particular request is inappropriate.

5. Arriving Passengers

The notice contained a minor, technical amendment to section 148.19, Customs Regulations (19 CFR 148.19). Section 148.19 is being further amended to state that, if a seizure is not made, an amount equivalent to the maximum penalty which may be assessed in accordance with the passenger's degree of culpability as provided for in 19 U.S.C. 1592 shall be demanded from the passenger, and that the amount demanded may be mitigated in accordance with the revised penalty guidelines. The language "or to treat an article in some other manner in order to obtain a benefit" has been added to section 148.19.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document because the amendments will not have a significant economic impact on a substantial number of small entities. The amendments are not expected to have significant secondary or incidental effects on a substantial number of small entities, or to impose, or otherwise cause a significant increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Because this document will not result in a regulation which will be a "major rule" as defined in section 1(b) of E.O. 12291, a regulatory impact analysis as prescribed by section 3 of the E.O. is not required.

Drafting Information

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR

Part 134

Customs duties and inspection, Imports.

Part 148

Customs duties and inspection, Imports.

Part 162

Customs duties and inspection, Imports, Administrative practice and procedure, Law enforcement, Penalties, Seizures and fortfeitures, Prior disclosure.

Part 171

Customs duties and inspection, Imports, Administrative practice and procedure, Law enforcement, Penalties, Seizures and forfeitures.

Part 172

Customs duties and inspection, Imports, Administrative practice and procedures, Liquidated damages.

AMENDMENTS TO THE REGULATIONS

Parts 134, 148, 162, 171 and 172, Customs Regulations (19 CFR Parts 134, 148, 162, 171, 172), are amended as set forth below.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: December 21, 1983.

JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, January 13, 1984 (49 FR 1672)]

PART 134—COUNTRY OF ORIGIN MARKING

The First sentence of § 134.52(d) is amended by substituting "monetary penalty" for "forfeiture value."

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

§ 148.18 is revised to read as follows:

§ 148.19 False or fraudulent statement.

A passenger who makes any false or fraudulent statement or engages in other conduct within the purview of section 592. Tariff Act of 1930, as amended (19 U.S.C. 1592), whereby a Customs officer is or may be induced to pass an article free of duty or at less than the proper amount of duty, or to treat an article in some other manner in order to obtain a benefit, shall be deemed to have violated 19 U.S.C. 1592. In any such case the article involved shall be seized only if one or more of the conditions set forth in section 162.75 of this chapter are present, if it is available for seizure at the time the violation is detected, and if such seizure is otherwise practicable, unless the article is in the possession of an innocent holder for value who has full right to possession as against any party to the Customs violation. If seizure is not made, an amount equivalent to the maximum penalty which may be assessed in accordance with the passenger's degree of culpability as provided in 19 U.S.C.

1592(c) shall be demanded from the passenger. The amount demanded in lieu of seizure shall be determined in accordance with the guidelines contained in the appendix to Part 171 of this chapter. In all cases, the estimated duties shall be demanded of the passenger as soon as possible after the discovery of the violation. Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 1624))

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. Part 162 is amended by removing § 162.41 (a) and (b) and by redesignating § 162.41(c) as new § 162.80. Section § 162.41 is marked "[Reserved]."

2. § 162.71 is amended by adding a new paragraph (e) to read as follows:

§ 162.71 Definitions.

(e) *Discloses the circumstances of the violation.* When used in § 162.74(a), the term "discloses the circumstances of the violation" means the act of providing to Customs a written statement which:

(1) Identifies the class or kind of merchandise involved in the violation;

(2) Identifies the importation included in the disclosure by entry number or by indicating each Customs port of entry and the approximate dates of entry;

(3) Specifies the material false statements or material omissions made; and

(4) Sets forth to the best of the violator's knowledge, the true and accurate information or data which should have been provided in the entry documents and states that the person will provide any information or data which is unknown at the time of disclosure within 30 days of the initial disclosure date or within an extension of the 30-day period as the district director may permit in order for the person to obtain the information or data.

§ 162.74 is revised to read as follows:

§ 162.74 Prior disclosure.

(a) *In general.* (1) A prior disclosure is made if the person concerned discloses the circumstances of a violation (as defined in § 162.71(e)) of section 592. Tariff Act of 1930, as amended (19 U.S.C. 1592), in writing to a district director before, or without knowledge of, the commencement of a formal investigation of that violation, and makes a tender of any actual loss of duties in accordance with paragraph (h) of this section.

(2) A person shall be accorded the full benefit of prior disclosure treatment if that person provides information to Customs with respect to a violation of 19 U.S.C. 1592 which does not meet the re-

quirements of a written disclosure statement pursuant to this section if the district director is satisfied that the information was provided before or without knowledge of the commencement of a formal investigation, and the information provided includes substantially the information specified in section 162.71(e). The provision of this information need not be in writing.

(b) *Time of prior disclosure.*

(1) If the documents which provide the disclosing information are sent by certified mail, return-receipt requested, and are ultimately received by Customs, the disclosure shall be deemed to have been made at the time of mailing.

(2) If the documents are sent otherwise by mail or are delivered in person, the disclosure shall be deemed to have been made at the time of receipt by Customs. If the documents are delivered in person, the person delivering the documents is to request a receipt from Customs, stating the time and date of receipt.

(3) The provision of information which is not in writing but which qualifies for prior disclosure treatment pursuant to paragraph (a)(2) of this section shall be deemed to have occurred at the time which Customs was provided with information which substantially complies with the requirements of section 162.71(e).

(4) Any documents relating to a prior disclosure should be addressed to the immediate attention of the district director.

(c) Referral for investigation. Any disclosure of a violation shall be referred immediately by the district director to the appropriate filed office of the Office of Investigations. Upon completion of its investigation, the field office shall immediately return the disclosure, together with its report, to the district director for appropriate action.

(d) *Commencement of formal investigation.* A formal investigation of a violation is considered to be commenced:

(1) In the case of a referral by an import specialist or other Customs officer of a matter involving the disclosing party and the disclosed information for investigation of a possible violation of 19 U.S.C. 1592, on the date recorded in writing as the date on which the matter was referred to the Office of Investigations;

(2) In the case of referral by an import specialist or other Customs officer of a request for value, classification, or other technical investigation, on the date recorded in writing by an investigating agent in the investigatory record (including contemporaneous notes) as the date on which facts and circumstances were discovered or information was received which caused an investigating agent to believe that possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information;

(3) In the case of an investigation prompted by an individual other than a Customs officer with regard to the disclosing party and the disclosed information, on the date recorded in writing by

the Office of Investigations in the investigatory record (including contemporaneous notes) as the date on which the information was received;

(4) In all other cases, on the earliest of the following:

(i) The date recorded in writing by the Office of Investigations in the investigatory record (including contemporaneous notes) as the date on which facts and circumstances were discovered or information was received which caused an investigating agent to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information;

(ii) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation;

(iii) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the disclosed information.

(e) *Expansion of formal investigation.* A formal investigation is deemed to have commenced as to additional violations (outside the scope of the original investigation but committed by the same party) on the earliest of the following:

(1) The date recorded in writing by the Office of Investigations in the investigatory record (including contemporaneous notes) as the date on which facts and circumstances were discovered or information was received which caused an investigating agent to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the additional violations;

(2) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of additional violations; or

(3) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the additional violations.

(f) *Proof of lack of knowledge.* A person who claims a lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. A person shall be presumed to have had knowledge of the commencement of a formal investigation of a violation if, before the claimed prior disclosure of the violation;

(1) An investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation; or

(2) An investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the disclosed information.

That presumption may be rebutted by evidence that, notwithstanding the inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed information.

(g) *Penalty claims not requiring formal investigation.* A prior disclosure may not be made after a determination by an authorized Customs officer that there is reasonable cause to believe that there has been a violation of 19 U.S.C. 1592 and that a claim for monetary penalty shall be issued without commencement of a formal investigation. Such determination shall be evidenced as follows:

(1) By the issuance of a pre-penalty notice:

(2) By the issuance of a penalty notice if a pre-penalty notice is not required;

(3) In the case of violations involving merchandise accompanying persons entering the United States or commercial merchandise inspected in connection with entry by, oral notification to the person of the officer's funding of a violation; or

(4) In the case of the seizure of merchandise under 19 U.S.C. 1592, by the act of seizure.

(h) *Tender of actual loss of duties.* A person who discloses the circumstances of the violation shall tender any actual loss of duties at the time of disclosure or within 30 days after the district director notifies the person in writing of his calculation of the actual loss of duties. The district director may extend the period if he determines there is good cause to do so.

(i) *Undisclosed violations.* Undisclosed violations discovered by Customs as the result of an investigation of a prior disclosure of another violation shall not be entitled to treatment under the prior disclosure provisions.

(j) *Minor violations.* The district director shall not refer a disclosed violation for investigation or establish a penalty case if:

(1) The disclosed violation involves a loss of duties of $500 or less;

(2) Any actual loss of duties has been deposited;

(3) There is no evidence that the violation was fraudulent; and

(4) There are no other compelling reasons for a penalty proceeding, such as history of similar violations.

4. § 162.75(d)(3) is amended by substituting "compliance made with the decision for "the monetary penalty paid."

5. 162.78(b), is amended by adding the following between the first and second sentences:

§ 162.78 Presentations responding to prepenalty notice.

* * * * * * *

(b) * * * In addition, an extension may be granted if, upon request of the alleged violator, the Commissioner of Customs determines that the case involves an issue which is a proper matter for

submission to Customs Headquarters under internal advice procedures (See § 177.11(b)(2)).* * *

6. The second sentence of § 162.79(b)(2), is amended by substituting "section 592(d), Tariff Act of 1982, as amended (19 U.S.C. 1582(d))," for "section 162.79(b)."

7. New § 162.30 (redesignated from § 162.41(c)) reads as follows:

§ 162.80 Liability for duties; liquidation of entries.

(a)(1) When an entry is the subject of an investigation for possible violation of section 592, Tarriff Act of 1930, as amended (19 U.S.C. 1592), or of a penalty action established under that section, the district director, subject to the provisions of paragraph (a)(2) of this section, may liquidate the entry and collect duties before the conclusion of the investigation or final disposition of the penalty action, if he determines that liquidation would be in the interst of the Government.

(2)(i) An entry not liquidated within 1 year from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless the time for liquidation is extended by the district director because—

(A) Information needed by Customs for the proper appraisement or classification of the merchandise is not available.

(B) The importer, his consignee, or agent requests an extension and demonstrates good cause why the extension should be granted, or

(C) The 1-year liquidation period is suspended as required by statute or court order.

(ii) An entry not liquidated within 4 years from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless liquidation continues to be suspended by statute or court order. In that event, the entry shall be liquidated within 90 days after removal of the suspension.

(iii) The district director promptly shall notify the importer or consignee concerned and any authorized agent and surety of the importer or consignee in writing of any extension or suspension of the liquidation period.

(b) When merchandise not covered by an entry is subject to section 592, Tariff Act of 1930 as amended (19 U.S.C. 1592), a demand shall be made on the importer for payment of the duty estimated to be due on such merchandise.

(c) Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 171—FINES, PENALTIES, AND FORFEITURES

1. § 171.1 is removed and marked "[Reserved]."

2. Section 171.2 is redesignated as section 171.24 and is amended by substituting "Department of Justice" for "United States attorney" in the first and second sentences. Section 171.2 is marked "[Reserved]."

3. § 171.33(a) (1) and (2) are amended by substituting "from which further relief is requested" for "on the initial petition for relief."

4. § 171.33 is further amended by adding a new paragraph (c) and (d) to read as follows:

171.33 Supplemental petitions for relief.

* * * * * * *

(c) *Second supplemental petition.* (1) Only one further supplemental petition may be filed appealing a decision made with respect to an initial supplemental petition. The second supplemental petition will not be accepted unless accompanied or preceded by full payment of all penalties and withheld duties determined to be due in the decision rendered on the first supplemental petition. Such payment must be made within 60 days from the date of notice to the petitioner of the decision on the first supplemental petition if no effective period is prescribed in the decision, or within such time prescribed, if any. The second supplemental petition should be filed with the district director who initiated the case. For the purpose of this section, the term "second supplemental petition" shall include an offer in compromise under 19 U.S.C. 1617 made prior to the commencement of a civil action to enforce the penalty claim.

(2) A second supplemental petition will not be considered except in one of the following circumstances:

(i) If it is filed within 2 years from the date of notice to the petitioner of the decision on the first supplemental petition;

(ii) If it is filed within 60 days following an administrative or judicial decision with respect to the entries involved in the penalty case which reduces the loss of duties upon which the mitigated penalty amount was based; or

(iii) If the deciding official in his discretion determines that the acceptance of a second supplemental petition is warranted.

(d) *Appeals to the Secretary of the Treasury.* A petitioner filing a supplemental petition pursuant to this section from a decision of the Commissioner of Customs with respect to any liabililty assessed under 19 U.S.C. 1592 may request that the petition be accepted as an appeal to the Secretary of the Treasury. The Secretary will accept for decision any such supplemental petition when in his discretion he determines that such petition raises a question of fact, law or policy of such importance as to require a decision by the Secretary. If the Secretary declines to accept an appeal for deci-

sion, the petitioner will be so informed; in such a case, if the supplemental petition is an initial supplemental petition or a second supplemental petition eligible for consideration under paragraph (c) of this section, a decision thereon will be issued by Customs.

(R.S. 251, as amended, R.S. 5294, as amended, sec. 9, 24 Stat. 81, as amended, secs. 618, 624, 641, 46 Stat. 757, as amended, 759 (19 U.S.C. 66, 1618, 1624, 1641, 46 U.S.C. 7, 320))

PART 172—LIQUIDATED DAMAGES

1. § 172.33(a) (1) and (2) are amended by substituting "from which further relief is requested" for "on the initial petition for relief."

2. § 172.33 is further amended by adding a new paragraph (c) to read as follows:

172.33 Supplemental petitions for relief.

* * * * * * *

(c) *Second supplemental petition.* (1) Only one further supplemental petition may be filed appealing a decision made with respect to an initial supplemental petition. The second supplemental petition will not be accepted unless accompanied or preceded by full payment of all penalties and withheld duties determined to be due in the decision rendered on the first supplemental petition. Such payment must be made within 60 days from the date of notice to the petitioner of the decision on the first supplemental petition if no effective period is prescribed in the decision, or within such time prescribed, if any. The second supplemental petition should be filed with the district director who initiated the case.

(2) A second supplemental petition will not be considered except in one of the following circumstances:

(i) If it is filed within 2 years from the date of notice to the petitioner of the decision on the first supplemental petition;

(ii) If it is filed within 60 days following an administrative or judicial decision which reduces the loss of duties upon which the mitigated penalty amount was based; or

(iii) If the deciding official in his discretion determines that the acceptance of a second supplemental petition is warranted.

(R.S. 251, as amended, R.S. 5294, as amended, sec. 9, 24 Stat. 81, as amended, secs. 618, 623, 624, 641, 46 Stat. 757, as amended, 759, as amended (19 U.S.C. 66, 1618, 1623, 1624, 1641, 46 U.S.C. 7, 320))

PART 171—IS BEING AMENDED BY ADDING APPENDIX B

Appendix B to Part 171—Customs Regulations, Revised Penalty Guidelines, 19 U.S.C. 1592.

A monetary penalty incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592: hereinafter referred to as section 592) may be remitted or mitigated under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), if it is determined that there exist such mitigating circumstances as to justify remission or miti-

gation. The guidelines below will be used by the Customs Service in arriving at a just and reasonable assessment and disposition of liabilities arising under section 592 within the stated limitations. It is intended that these guidelines shall be applied by Customs officers in pre-penalty proceedings and in determining the monetary penalty assessed in the penalty notice. The assessed or mitigated penalty amount determined in accordance with these guidelines does not limit the penalty amount which the Government may seek in bringing a civil enforcement action pursuant to 19 U.S.C. 1592(e).

(A) *Violations of Section 592; Materiality.* Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty thereby, a violation of section 582 occurs when a person, through fraud, gross negligence, or negligence, enters, introduces, or attempts to enter or introduce any merchandise into the commerce of the United States by means of any document, written or oral statement, or act which is material and false, or any omission which is material; or when a person aids or abets any other person in the entry, introduction, or attempted entry or introduction of merchandise by such means. A document, statement, act, or omission is material if it has the potential to alter the classification, appraisement, or admissibility or merchandise, or the liability for duty, or if it tends to conceal an unfair trade practice under the antidumping, countervailing duty or a similar statute, or an unfair act involving patent or copyright infringement.

There is no violation if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of a pattern of negligent conduct.

(B) *Degrees of Culpability.* There are three degrees of culpability under section 592: negligence, gross negligence, and fraud.

(1) *Negligence.* A violation is determined to be negligent if it results from an act or acts (of commission or omission) done through either the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences therefrom, in ascertaining the offender's obligations under the statute, or in communicating information so that it may be understood by the recipient. As a general rule, a violation is determined to be negligent if it results from the offender's failure to exercise reasonable care and competence to ensure that a statement made is correct.

(2) *Gross Negligence.* A violation is determined to be grossly negligent if it results from an act or acts (of commission or omission) done with actual knowledge of or wanton disregard for the relevant facts and with indifference or disregard for the offender's obligations under the statute, but without intent to defraud the revenue or violate the laws of the United States.

(3) *Fraud.* A violation is determined to be fraudulent if it results from an act of acts (of commission or omission) deliberately done

with intent to defraud the revenue or to otherwise violate the laws of the United States, as established by clear and convincing evidence.

(C) *Assessment of Penalties.*

(1) *Issuance of Pre-Penalty Notice.* (a) As provided in § 162.77, Customs Regulations (19 CFR 162.77), if the district director has reasonable cause to believe that a violation of section 592 has occurred and determines that further proceedings are warranted, he shall issue to each person concerned a notice of his intent to issue a claim for a monetary penalty. In issuing such pre-penalty notice, the district director shall make a tentative determination of the degree of culpability and the amount of the proposed claim. A pre-penalty notice is not required if the violation involves a non-commercial importation or if the proposed claim does not exceed $1,000.

(b) If the violation is determined to be the result of fraud, the proposed claim shall be equal to the domestic value of the merchandise. In cases involving gross negligence and negligence, in determining the amount of the proposed claim, the district director shall take into account the gravity of the offense, the amount of loss of revenue, the extent of wrongdoing, mitigating, aggravating and extraordinary factors, and other factors bearing upon the seriousness of the violation, but in no case shall the assessed penalty exceed the statutory ceilings prescribed in section 592. In cases involving gross negligence and negligence, penalties equivalent to the ceilings stated in paragraph (D) regarding disposition of cases may be appropriate in cases involving serious violations, e.g., violations involving a high loss of revenue and quota evasions. To be serious, a violation need not result in a loss of revenue. The violation may be serious because it affects the admissibility of merchandise or the enforcement of other laws, as in the case of quota evasions, false statements to conceal the dumping of merchandise, or violations of exclusionary orders of the International Trade Commission.

(c) Violations where the loss of revenue is nonexistent or minimal and which have an insignificant impact on enforcement of the laws of the United States may justify a proposed penalty in a fixed amount not related to the value of merchandise, but an amount believed sufficient to have a deterrent effect, i.e., violations involving the subsequent sale of merchandise or vehicles entered for personal use; violations involving failure to comply with declaration or entry requirements which do not change the admissibility or entry status of merchandise, its appraised value or classification; violations involving the illegal diversion to domestic use of instruments of international traffic, and local point-to-point traffic violations. This category also includes violations in which the falsity or omission is revelant only to the assessment of duties, but in which it is finally determined that the falsity or omission did not result in any loss of duties, i.e., failure to report commissions paid which are ultimately

determined to be non-dutiable; or a false statement as to the relationship of the parties if the fact of the relationship is determined not to affect appraisement. In order for there to be a violation of section 592, the falsity or omission must be material, as defined in paragraph (A) of these guidelines. Generally, a penalty in a fixed amount ranging from $100 to $500 would be appropriate in cases where there are no prior violations of the same kind. Fixed sums ranging from $500 to $10,000 may be appropriate, however, in the case of multiple or repeated violations. Fixed sum penalty amounts may not exceed the maximum amounts stated in section 592 and in these guidelines.

(d) In determining the amount of the proposed penalty, the district director shall also take into account any mitigating, aggravating, or extraordinary factors that are clearly established by the evidence available at the time.

(2) *Issuance of Penalty Notice.* (a) Following issuance of the Pre-penalty notice, and in consideration whether or not to issue a penalty notice pursuant to § 162.79. Customs Regulations (19 CFR 162.79), and if so, in what amount, the district director shall give consideration to all available evidence with respect to the existence of material false statements or omissions (including evidence presented by the alleged violator), the degree of culpability, the existence of a prior disclosure, the seriousness of the violation, and the existence of mitigating, aggravating, or extraordinary factors. In all cases involving fraud, the penalty notice shall be in the amount of the domestic value of the merchandise. In general, the degree of culpability stated in a pre-penalty notice shall not be increased in the penalty notice. If, subsequent to the issuance of a pre-penalty notice and upon further review of the evidence, the district director determines that a higher degree of culpability exists, the pre-penalty notice should be cancelled and a new pre-penalty notice issued indicating the higher degree of culpability and increased penalty amount proposed, with supporting evidence reflected therein. If, however, less than 3 months remain before expiration of the statute of limitations, the higher degree of culpability and higher penalty amount may be indicated in the notice of penalty. Alternatively, the district director shall consider whether a lower degree of culpability is warranted by the evidence. The penalty notice shall contain other changes in the information provided in the pre-penalty notice.

(b) No penalty case shall be initiated for revenue-loss violation. If the district director is certain that the violation has resulted from negligence, the combined actual and potential loss of revenue from entries within that district is $500 or less, and the circumstances make it certain it is a violation which does not extend to other districts. In cases in which the loss of revenue is between $500 and $1,000, the district director may initiate a penalty case if, in his consideration of all the circumstances, the claim for monetary pen-

alty is warranted as a deterrent for future violations. Any actual loss of revenue shall be collected pursuant to § 162.79b. Customs Regulations (19 CFR 162.79b).

(c) No penalty case shall be initiated for a violation involving gross negligence or negligence where a prior disclosure has been made and there is no actual loss of revenue, or where the actual loss of revenue has been tendered to Customs and the interest thereon is less than $500.

(D) *Disposition of Cases.*

(1) *In General.* In mitigating claims for monetary penalty, the district director or appropriate Customs official shall consider all the information in the petition and all available evidence, taking into account any mitigating, aggravating, and extraordinary factors in determining the final assessed penalty. All factors used by the district director or appropriate Customs Official in determining the penalty should be stated in this decision. If a penalty in a fixed amount is deemed not be appropriate (see (C)(1)(c)), disposition in revenue-loss and non-revenue-loss cases shall proceed in the manner set forth below.

(2) *Violations Determined to be Fraudulent.* Absent extraordinary factors justifying further relief, a penalty for a fraudulent violation shall be mitigated as follows:

(a) For revenue-loss violations, to an amount ranging from a minimum of five times the loss of revenue to a maximum of the lesser of the domestic value of the merchandise or eight times the loss of revenue. However, a penalty equal to the greater of the domestic value of the merchandise or eight times the loss of revenue may be warranted due to the existence of aggravating factors.

(b) For non-revenue-loss violations, to an amount of ranging from 50 to 80 percent of the dutiable value of the merchandise. However, a penalty equal to the domestic value of the merchandise may be warranted due to the existence of aggravating factors.

(3) *Violations Determined to be Grossly Negligent.* Absent extraordinary factors justifying further relief, a penalty for a grossly negligent violation shall be mitigated as follows:

(a) For revenue-loss violations, to an amount ranging from a minimum of two and one-half times the loss of revenue to a maximum of the lesser of the domestic value of the merchandise or four times the loss of revenue;

(b) For non-revenue-loss violations, to an amount ranging from 25 to 40 percent of the dutiable value of merchandise.

(4) *Violations Determined to be Negligent.* Absent extraordinary factors justifying further relief, a penalty for a negligent violation shall be mitigated as follows:

(a) For revenue-loss violations, to an amount ranging from a minimum of one-half the loss of revenue to a maximum of the lesser of the domestic value of the merchandise or two times the loss of revenue.

(b) For non-revenue-loss violations, to an amount ranging from five to 20 percent of the dutiable value of the merchandise.

(5) *Cancellation of Claim.* The district director shall cancel a claim for monetary penalty whenever it is determined that an essential element of the violation has not been established by the available evidence.

(6) *Remission of Claim.* If, following consultation with the regional counsel, the district director determines by clear and convincing evidence that the statute of limitations would be available as a defense to enforcement of a claim for monetary penalty, then the district director shall remit such claim, if it is within his authority as provided in section 171.21, Customs Regulations (19 CFR 171.21). Any such case not within the district director's authority should be referred to the Commercial Fraud and Negligence Penalties Branch at Customs Headquarters. If the district director believes that a claim for monetary penalty should be remitted for a reason not set forth in these guidelines, he shall first obtain approval from the Chief, Commerical Fraud and Negligence Penalties Branch, Headquarters, Customs Service.

(E) *Prior Disclosure; Disposition of Cases.*

(1) In non-revene-loss cases and potential-revenue loss cases involving a prior disclosure where the degree of culpability is determined to be negligence or gross negligence, the claim for monetary penalty is to be remitted in full.

(2) In non-revenue-loss cases involving a prior disclosure where the degree of culpability is determined to be fraud, the claim for monetary penalty shall be equal to ten percent of the dutiable value of the merchandise. There shall be no further mitigation in the absence of extraordinary factors.

(3) In actual-revenue-loss cases involving a prior disclosure where the degree of culpability is determined to be negligence or gross negligence, the claim for monetary penalty shall be equal to the interest computed from the date of liquidation on the amount of the actual loss of revenue resulting from the violation.

(4) In revenue-loss cases involving a prior disclosure where the degree of culpability is determined to be fraud, the claim for monetary penalty shall be equal to 100 percent of the total actual and potential loss of revenue resulting from the violation.

There shall be no further mitigation in the absence of extraordinary factors.

(F) *Mitigating Factors.* The following factors shall be considered in mitigation of the penalty, provided that sufficient evidence establishes their existence. The list is not exclusive.

(1) *Contributory Customs Error.* This factor includes misleading or erroneous advice given by a Customs official only if it appears that the violator reasonably relied upon the information. If the claimed erroneous advice was not given in writing, the violator has the burden of establishing this claim by preponderance of the evi-

dence. The concepts of comparative negligence may be utilized in determining the weight to be assigned to this factor. If it is determined that the Customs error was the sole cause of the violation, the penalty is to be cancelled. If the Customs error contributed to the violation, but the violator is also culpable, the Customs error is to be considered as a mitigating factor.

(2) *Cooperation with the Investigation.* In order to obtain the benefits of this factor, the violator must exhibit cooperation beyond that expected from a person under investigation for a Customs violation. Some examples of the cooperation contemplated include assisting Customs officers to an unusual degree in auditing the books and records of the violator, and assisting Customs in obtaining additional information relating to the subject violation or other violations. Merely providing the books and records of the violator may not be considered cooperation justifying mitigation.

(3) *Immediate Remedial Action.* This factor includes the payment of the actual loss of duties prior to the issuance of a penalty notice and within 30 days of the determination of the duties owed. In certain extreme circumstances, this factor may include the removal of an offending employee. The correction of organizational or procedural defects will not be considered a mitigating factor. It is expected that any importer or other involved individual will seek to remove or change any condition which contributed to the existence of a violation.

(4) *Inexperience in Importing.* Inexperience is a factor only if it contributes to the violation and the violation is not due to fraud or gross negligence.

(5) *Prior Good Record.* For the violator to benefit from this factor, the violation must have occurred as a result of negligence or gross negligence, and the violator must be able to show a consistent pattern of importations without violation of section 592, or any other statute prohibiting false or fraudulent importation practices.

(C) *Aggravating Factors.* Certain factors may be determined to be aggravating factors in arriving of the final mitigated penalty decision. Examples of aggravating factors include obstructing the investigation, withholding evidence, providing misleading information concerning the violation, and prior substantive violations o. section 592 for which a final administrative finding of culpability has been made.

(H) *Extraordinary Factors Justifying Further Relief.*

(1) The four factors specified below may be considered in connection with further relief. Such relief may be accorded for extraordinary factors not specified below only upon the concurrence of the Chief, Commercial Fraud and Negligence Penalties Branch, Headquarters.

(a) *Inability to obtain jurisdiction over the violator or inability to enforce a judgement against the violator.*

(b) *Inability To Pay the Mitigated Penalty.* The party claiming the existence of this factor must present documentary evidence in support thereof, i.e., copies of income tax returns, current financial statements and independent audit reports.

(c) *Extraordinary Expenses.* This factor may include such expenses as those incurred in providing one-time computer runs solely for submission to Customs to aid it in analyzing a case involving an unusual number of entries, with each entry involving several factors, i.e., violations involving item 607, Tariff Schedules of the United States. Usual accounting and legal expenses (both general and Customs), or the cost incurred in instituting remedial actions would not be considered extraordinary expenses.

(d) *Customs Knowledge.* Additional relief in non-fraud cases will be granted if it is determined that Customs had actual knowledge of a violation and failed to inform the violator so that it could have taken earlier corrective action. In such cases, if a penalty is to be assessed involving violations of the same kind, the maximum penalty amount for violations occurring after the date on which actual knowledge was obtained by Customs will be limited to two times the loss of revenue in revenue-loss cases or five percent of dutiable value in non-revenue-loss cases if the continuing violations were the result of gross negligence, or the lesser of one time the loss of revenue in revenue-loss cases or two percent of dutiable value, in non-revenue-loss cases if the violations were the result of negligence. This factor shall not be applicable when a substantial delay in the investigation is attributable to the violator.

(i) Customhouse Broker. A customhouse broker shall be subject to the above guidelines only if he is determined to have (1) committed a fraudulent or grossly negligent violation; or (2) committed a grossly negligent or negligent violation and shared in the financial benefits of the violation to an extent over and above the prevailing brokerage fees.

If the broker committed a grossly negligent violation without sharing in the financial benefits over and above the prevailing brokerage fees, the penalty should ordinarily be mitigated to a flat sum which should not exceed $500.

If the broker committed a negligent violation without sharing in the financial benefits over and above the prevailing brokerage fees, the penalty should ordinarily be mitigated to a flat sum not to exceed $250. A broker is not negligent if he acts with reasonable care (as measured by the prevailing standards of the profession) in the preparation and presentation of the entry or the entry summary, and reasonably relies on the information on documents supplied to him by the actual owner, consignee, shipper, or their agent.

(j) *Arriving Travelers.*

(1) *Liability.* Assessment of penalties and determination of degrees of culpability for violations by an arriving traveler must be determined in accordance with the above guidelines.

(2) *Limitations on Liability.* (a) In the absence of a referral for criminal prosecution, monetary penalties assessed in the case of a first-offense, non-commercial, fraudulent violation by an arriving traveler will generally be limited: (1) in the case of revenue-loss violations, to an amount ranging from a minimum of three times the loss of revenue to a maximum of five times the loss of revenue, provided the loss of revenue is also paid; (2) in the case of non-revenue-loss violations, to an amount ranging from a minimum of 30 percent of the dutiable value to a maximum of 50 percent of the dutiable value.

(b) With respect to revenue-loss violations, no penalty case shall be intitiated against an arriving traveler if the violation is not fraudulent or commercial, the loss of revenue is $100 or less, and there are no other concurrent or prior violations of section 592 or other statutes prohibiting false or fraudulent importation practices. However, all lawful duties shall be collected. With respect to non-revenue-loss violations, no penalty case shall be initiated against an arriving traveler if the violation is not fraudulent or commercial, there are no other concurrent or prior violations of section 592, and a penalty is not believed necessary to deter future violations or to serve a law enforcement purpose.

(K) *Violations of Laws Administered by Other Federal Agencies.* Violations of laws administered by other federal agencies (such as Foreign Assets Control, Agriculture, Fish and Wildlife) should be referred to the appropriate agency for its recommendation. Such recommendation, if promptly tendered, will be given due consideration, and may be followed provided the recommendation would not result in a disposition inconsistent with these guidelines.

(T.D. 84-19)

Bonds

Approval and discontinuance of bonds on Customs Form 7587 for the control of Instruments of International Traffic of a kind specified in section 10.41a of the Customs Regulations

Bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following which has been discontinued. If the previous bond was in the name

of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: January 6, 1984.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Airco Industrial Gases—See BOC Group Inc.			
American Industrial Carriers, Inc., 60 Threadneedle Lane, Stamford, CT; Investors Ins. Co. of America. D 1/4/84	Jan. 5, 1982	Jan. 6, 1982	New York Seaport $10,000
The BOC Group Inc. & its divisions: Ohio Medical Products, and Airco Industrial Gases, 85 Chestnut Ridge Rd., Montvale, NJ; American Casualty Co. (PB 10/10/78) D 11/2/83[1]	Nov. 2, 1983	Nov. 7, 1983	New York Seaport $10,000
J. C. Brock Corp., 95 Kentucky St., Buffalo, NY; Firemens Insurance Company of Newark, NJ.	Oct. 6, 1983	Nov. 24, 1983	Buffalo, NY $10,000
Cast North America (1983) Inc., 4150 St. Catherine Street West, Montreal, Quebec, Canada; Fireman's Fund Ins. Co. (PB 9/1/72) D 10/18/83[2]	Sept. 28, 1983	Oct. 18, 1983	Chicago, IL $10,000
Dribeck Importers Inc., 200 Field Point Rd., Greenwich, CT; Investors Ins. Co. of America (A NJ Corp.). (PB 12/3/71) D 2/7/83[3]	Dec. 7, 1983	Dec. 7, 1983	New York Seaport $10,000
Flexi Van Leasing, Inc., Uniflex Div., 444 Brickell Ave., Miami, FL; St. Paul Fire & Marine Ins. Co. D 12/9/83	Oct. 7, 1982	Oct. 7, 1983	Miami, FL $10,000
Emilio Antunano Garcia d/b/a Manantial la Marquesa Inc., 652 Roosevelt St., Miramar Santurce, PR; Seaboard Surety Co. (PB 5/9/83) D 11/28/83[4]	Oct. 3, 1983	Oct. 27, 1983	San Juan, PR $10,000
Hoyer (USA) Inc. (A NJ Corp.), 1201 Corbin St., Port Elizabeth, NJ; The Hartford Accident and Indemnity Co.	Oct. 1, 1983	Dec. 5, 1983	New York Seaport $10,000
International Paper Sales Co., Inc., Montreal, Quebec, Canada; Fidelity & Deposit Co. of MD. D 10/17/83	Aug. 28, 1963	Feb. 14, 1964	New Orleans, LA $10,000
Ronald A. Lausier, Van Buren, ME; The Aetna Casualty and Surety Co. D 11/4/83	Dec. 23, 1976	Jan. 3, 1977	Portland, ME $10,000
Lawrence Forwarding—See Scottish Express International, Inc.			
Lockwood Corp., Gering, NB; National Union Fire Ins. Co.	Sept. 16, 1983	Nov. 7, 1983	Great Falls, MT $30,000
Lockwood Corp., Hwy 92 East, P.O. Box 160, Gering, NB: U.S. Fidelity & Guaranty CoP D 9/16/83.	Sept. 16, 1982	Nov. 15, 1982	Pembina, ND $30,000
Moore McCormack Lines Inc. (A NY Corp.), 2 Broadway, New York, NY; American Motorists Ins. Co. (An IL Corp.). (PB 8/19/76) D 11/4/83	Dec. 1, 1983	Dec. 1, 1983	New York Seaport $10,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
B. A. McKenzie & Co., Inc., 813 Pacific Ave., Tacoma, WA; Peerless Ins. Co. (PB 11/14/67) D 11/29/83[5]	Nov. 7, 1983	Nov. 29, 1983	Seattle, WA $10,000
Manantial la Marquesa Inc.—See Emilio Antunano Garcia			
Mar Chile, S.A., 200 Carondelet St., New Orleans, LA; Old Republic Ins. Co. D 11/21/83	Nov. 23, 1981	Nov. 23, 1981	New Orleans, LA $10,000
Ohio Medical Products—See The BOC Group Inc.			
Scottish Express International, Inc., and its division Lawrence Forwarding, 149-05 177th St., Jamaica, NY; Washington International Ins. Co.	Nov. 3, 1983	Nov. 3, 1983	New York Seaport $10,000
Seawind Ltd., 156 2nd St., San Franciso, CA; Old Republic Ins. Co.	Nov. 8,1983	Nov. 8, 1983	San Francisco, CA $10,000
Showa Maritime (USA), Inc., 350 California St., San Francisco, CA; Seaboard Surety Co.	Nov. 1, 1983	Nov. 1, 1983	San Francisco, CA $10,000
C. J. Tower & Sons of Buffalo Inc., 128 Dearborn St., Buffalo, NY; Aetna Ins. Co. (PB 11/15/63) D 12/28/83[6]	Nov. 30, 1983	Dec. 28, 1983	Buffalo, NY $10,000
Union Carbide Caribe, Inc., 260 Munoz Rivera Ave., Banco de Ponce Bldg., San Juan, PR; Puerto Rican-American Ins. Co. (PB 12/2/82) D 11/18/83	Oct. 19, 1983	Nov. 19, 1983	San Juan, PR $10,000
United States Lines (S.A.) Inc., 2 Broadway, New York, NY; American Motorists Ins. Co.	Nov. 4, 1983	Nov. 10, 1983	New York Seaport $20,000

[1] Principal is Airco Inc., Div. Ohio Medical Prod. Airco Industrial Gases Surety is Federal Ins. Co.
[2] Principal is Cast North America Limited, Surety is Transamerica Ins. Co.
[3] Surety is Peerless Ins. Co.
[4] Surety is C.N.A. Casualty of Puerto Rico.
[5] Surety is St. Paul Fire and Marine Ins. Co.
[6] Surety is Seaboard Surety Co.

(BON-3-10)
216502

EDWARD B. GABLE, JR.,
Director,
Carriers, Drawback and Bonds Division.

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 101

Proposed Change in Hours of Customs Service at Noyes, Minnesota

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed change in hours of service; solicitation of comments.

SUMMARY: This notice solicits public comments on a proposed reduction in the hours of service currently provided at the Customs port of Noyes, Minnesota, located on the U.S.-Canadian border, in the Pembina, North Dakota, Customs District.

Because traffic at Noyes does not justify the current 24-hour schedule, it is proposed to eliminate service between midnight and 8:00 a.m.

It is estimated that the proposed change, which would enable Customs to obtain more efficient use of its personnel, facilities, and resources, would result in substantial savings.

DATES: Comments must be received on or before March 12, 1984.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Denise Crawford, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229 (202–566–8157).

SUPPLEMENTARY INFORMATION:

Background

In general, section 101.6, Customs Regulations (19 CFR 101.6), provides that each Customs office shall be open for the transaction of Customs business between the hours of 8:30 a.m. and 5:00 p.m. on all days of the year except Saturdays, Sundays, and national

holidays. It also provides that services performed outside a Customs office generally shall be furnished between the hours of 8:00 a.m. and 5:00 p.m. However, because of local conditions, different but equivalent hours may be necessary to maintain adequate and efficient service.

The Customs ports of entry of Noyes, Minnesota, and Pembina, North Dakota, both located on the U.S.-Canadian border in the Pembina, North Dakota, Customs District, currently operate on a 24-hour basis and are staffed by Customs and Immigration and Naturalization Service personnel. Because traffic at Noyes and Pembina does not justify the hours of service between midnight and 8:00 a.m., and since these two ports are located only a mile and a quarter from each other, Customs does not believe it is cost efficient to staff both locations on a 24-hour basis. Because Pembina is located on an interstate highway and Noyes is not, and since a lesser volume of traffic is processed at Noyes between midnight and 8:00 a.m. than is processed at Pembina during the same hours, Customs is proposing to eliminate service between midnight and 8:00 a.m. at Noyes.

The proposal, if adopted, would enable Customs to realize a savings of more than $40,000 a year. In addition, the proposal would not have any major adverse impact on industry, transportation or local population because of the close proximity to Pembina which could easily absorb the additional workload.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspection, Harbors, Organization and functions (Government agencies), Seals and insignia.

Dated: December 9, 1983.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

[Published in the Federal Register, January 12, 1984 (49 FR 1530)]

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19 CFR Part 151

Examination of Imported Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to require that, as a general rule, all imported merchandise shall be examined at the place of arrival at the expense of the importer, rather than at "public stores" at Customs expense. A "public store" is a premises owned or leased by the Government and used for the storage of merchandise until it is released from Customs custody. The regulations now provide that unless the importer requests examination at a place other than a public store, merchandise is to be transported from the place of arrival to a public store for examination.

The proposed amendments would decrease Customs costs and liability while allowing more expeditious handling, examination, and release of cargo.

DATES: Comments must be received on or before March 12, 1984.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Thomas Davis, Office of Cargo Enforcement and Facilitation, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5354).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Under present section 151.6, Customs Regulations (19 CFR 151.6), all imported merchandise is required to be examined at the public stores, except inflammable, explosive, or dangerous merchandise, or any other merchandise which cannot be examined conveniently at the public stores, unless another place is requested by an importer and approved by Customs in accordance with section 151.7, Customs Regulations (19 CFR 151.7). The term "public store" is defined in section 561, Tariff Act of 1930 (19 U.S.C. 1561), as "(A)ny premises owned or leased by the Government and used for the storage of merchandise for the final release of which from Customs custody a permit has not been issued * * *."

Merchandise sent to the public stores for examination under section 151.6 has been opened, examined, and closed by Customs per-

sonnel at Customs expense. However, any costs incurred (other than Customs salaries) when merchandise is examined at a place other than the public stores, such as at the wharf or other place of arrival or at the importer's premises, at the request of an importer under section 151.7, are charged to the importer. This has resulted in recurring disputes between Customs and importers involving responsibility for opening/closing cargo packages for Federal examination requirements.

The wording of the current regulations allows an importer with a bulky or heavily-crated shipment which requires examination to refuse legitimately to request examination at other than public stores and let Customs decide how, when, and where to examine the shipment. If Customs decides to do so at the public stores, it may cost Customs a substantial sum to load and haul the merchandise to that place. If Customs decides to examine the shipment where it is, in the absence of a request from the importer, then Customs provides the time, manpower, and tools to perform the examination. In either case, Customs must assume the inherent liabilities and responsibilities.

The concept of "public stores" in the traditional sense has waned because Customs facilities, personnel, equipment, and logistic backing necessary to support that function are extremely limited in many locations.

It is clear that Customs may require examination of imported merchandise where it chooses (19 U.S.C. 1499). Further, Customs may require an importer to bear all examination expenses.

If implemented, the proposed amendments will benefit not only Customs, but also importers, brokers, and carriers by allowing for expeditious handling, examination, and release of cargo shipments. In addition, these amendments would:

1. Allow maximum utilization of inspectional personnel;
2. Reduce the amount of paperwork and other controls necessary to forward examination packages to public stores;
3. Reduce the possibility of injury to Customs personnel;
4. Reduce instances of liability to Customs for tort claims because of damaged or pilfered merchandise; and
5. Reduce recurring costs of poviding and replacing tools needed to conduct cargo examinations.

Accordingly, after studying the problem, Customs has determined that it would be desirable to amend sections 151.6 and 151.7 to require that, in general, all imported merchandise will be examined at the place of arrival rather than the public stores and at the expense of the importer. This does not preclude the importer from requesting examination at a place other than the place of arrival, such as the importer's premises. Existing public stores would not be abolished, but used much less frequently, and solely at Customs option.

Is it noted that this proposal is not intended to require an importer to pay any costs associated with the salary of a Customs employee in regard to examination of merchandise where such costs are not now paid.

AUTHORITY

This proposal is made under the authority of R.S. 251, as amended, section 461, 46 Stat. 717, section 467, as added June 25, 1938, section 11, 52 Stat. 1083, as amended, section 499, 46 Stat. 728, as amended, section 624, 46 Stat. 759 (19 U.S.C. 66, 1461, 1467, 1499, 1624).

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), from 9:00 a.m. to 4:30 p.m. on normal business days, at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

E.O. 12291 AND REGULATORY FLEXIBILITY ACT

It has been determined that this proposal is not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is hereby certified that the regulations set forth in this document, if promulgated, will not have a significant economic impact on a substantial number of small entities. Accordingly, these regulations are not subject to the regulations analysis or other requirements of 5 U.S.C. 603 and 604.

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations Controls Branch, U.S. Customs Services. However, personnel from other Customs offices participated in its development.

LISTS OF SUBJECTS IN 19 CFR PART 151

Customs duties and inspection, imports.

PROPOSED AMENDMENTS

It is proposed to amend sections 151.6 and 151.7, Customs Regulations (19 CFR 151.6, 151.7), as follows:

PART 151—EXAMINATION, SAMPLING, AND TESTING OR MERCHANDISE

1. Section 151.6 would be revised to read as follows:

151.6 PLACE OF EXAMINATION.

All merchandise will be examined at the place of arrival, unless examination at another place is required by the district director or authorized in accordance with section 151.7 of this part. Except where the merchandise is required by the district director to be examined at the public stores, the importer shall bear any expense involved in preparing the merchandise for Customs examination and closing packages.

2. The heading, prefatory language, and paragraphs (b) and (c) of section 151.7 would be revised to read as follows:

151.7 EXAMINATION ELSEWHERE THAN AT PLACE OF ARRIVAL OR PUBLIC STORES.

The district director may authorize examination at a place other than at the place of arrival or the public stores, such as at the importer's premises. If examination at a place other than at the place of arrival or the public stores is authorized it will be subject to the following conditions:

* * * * * * *

(b) *Preparation for Customs examination and closing packages.* Except when merchandise is required by the district director to be examined at the public stores, the importer shall arrange and bear any expense for preparation of the merchandise for Customs examination and closing of packages.

(c) *Reimbursement of expenses outside port limits.* If the place of examination is not located within the limits of a port of entry or at a Customs station at which a Customs officer is permanently located, whether or not that location is the place of arrival, the importer shall pay any additional expenses, including actual expenses of travel and subsistence but not the salary during regular hours of duty of the examining officer. However, no collection will be made if the total amount chargeable against one importer for one day amounts to less than 50 cents. If the total amount chargeable amounts to 50 cents or more but less than $1, a minimum charge of $1 will be made.

* * * * * * *

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: December 14, 1983.
JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, January 12, 1984 (49 FR 1531)]

(19 CFR Chapter I)

Proposed Notice of Rulemaking Relating to Entry Type Codes and Entry Numbers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: Customs has undertaken numerous initiatives relating to the development of a comprehensive integrated automated commercial system. To ensure entry processing efficiency for both Customs and entry preparers, changes in the assignment and format of (1) entry type codes and (2) entry numbers are desirable. The purpose of this notice is to inform the public of these two intended changes, and invite interested parties to comment thereon.

Customs anticipates that the procedure relating to entry type codes will be instituted on a voluntary basis in the near future, and that both procedures will be implemented fully during calendar year 1984. After considering the comments received in response to this notice, Customs will publish a final document in the Federal Register informing the public of its conclusions.

DATES: Comments must be received on or before March 13, 1984.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Richard J. Bonner, Duty Assessment Division (202-566-5492), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Customs has undertaken numerous initiatives relating to the development of a comprehensive integrated Automated Commercial System (ACS). When fully developed, this system will provide an efficient means for accomplishing the current and future entry processing needs of Customs, other government agencies, and the international trade community. Currently, many formal entries received by Customs are prepared on computers. More international trade businesses are planning to use computers as part of automating the preparation of import documentation.

To ensure entry processing efficiency for both Customs and entry preparers, changes in the assignment and format of (1) entry type codes, and (2) entry numbers are desirable.

This document informs the public of these two intended changes and invites interested parties to comment thereon. After consider-

ing the comments received in response to this notice, Customs will publish a final document informing the public of its conclusions.

ENTRY TYPE CODE

Current Procedure:

The currently used entry type codes, numbered one through seven, follow:

Entry type	Entry type code
Consumption Dutiable	1
Vessel Repair	2
Appraisement	3
Warehouse	4
Drawback	5
Bonded A/C Fuel	6
Consumption Free	7

These entry type codes have emerged over many years and served to identify only a few of the many entry types. They are more related to categories that are of statistical interest than as to types which distinguish Customs' processing requirements. Many entry types such as informals, quota, and temporary importation bond cannot be specifically identified with this entry type code procedure.

New Procedure:

There is a need to adopt a simple, flexible entry type code structure which will allow Customs to identify entry transactions by their processing requirements.

The following table of two-digit entry type codes uniquely identifies all current entry types and provides adequate room for additional types in the future. The first digit of the code identifies the general category of entry (i.e., consumption =0, informal =1, warehouse =2, etc.). The second digit further defines the specific processing type within the entry category (i.e., consumption quota =02, informal free and dutiable =11, etc.).

Where a transaction requires the use of more than one entry type code, the special entry processing type code 99 should be used (e.g., where both quota and countervailing duty apply to the same transaction, use entry type code 99).

CUSTOMS ENTRY TYPE CODES

Entry type	Entry type code
Consumption Entries:	
Free and Dutiable	01
Quota	02
Countervailing Duty/Antidumping Duty	03
Appraisement	04
Vessel Repair	05
Foreign Trade Zone (Consumption)	06
Informal Entries:	
Free and Dutiable	11
Quota	12
Warehouse Entries:	
Warehouse	21
Re-warehouse	22
Temporary Importation Bond (TIB)	23
Trade Fair	24
Permanent Exhibition	25
Foreign Trade Zone (Admission)	26
Warehouse Withdrawal:	
For Consumption	31
Quota	32
Aircraft and Vessel Supply	33
Countervailing Duty/Antidumping Duty	34
For Transportation	35
For Exportation	36
For Transportation and Exportation	37
Drawback Entries:	
Manufacturer	41
Same Condition	42
Rejected Importation	43
Government Entries:	
Defense Contract Importation (DCASR)	51
Dutiable	52
Free	53
Transportation Entries:	
Immediate Transportation	61
Transportation and Exportation	62
Immediate Exportation	63
Transit	64
Special Processing Entries:	
Special Entry Processing	99

Once effective, all entry preparers must show the applicable two-digit code on the appropriate Customs entry forms including the entry summary document, Customs Form 7501. Customs expects to implement parts of the new automated commercial processing system in the near future, and, therefore, requests the voluntary compliance of entry preparers in using the new codes as soon as

possible after that time. This procedure will be implemented fully during calendar year 1984.

Entry Number

Current Procedure:

Customs entries are identified by a nine-digit number in the following format:

FY-NNNNNN-C

FY represents the current fiscal year, NNNNNN is a sequential number, and C is a check digit computed from the first eight digits.

For each fiscal year, Customs issues blocks of entry numbers to brokers and importers for each district and port. Issuing and controlling these numbers have become an administrative burden to Customs and the importing community. The issuance process at the beginning of each fiscal year is particularly time consuming and costly.

New Procedure:

For the past year, Customs has been working with the trade community to develop a new entry numbering concept which is simple, flexible, and easy to manage. Customs is now completing the administrative details for this concept which should be implemented during calendar year 1984. At that time, Customs will amend its regulations by removing section 142.3a, Customs Regulations (19 CFR 142.3a), relating to the procedure for assigning entry numbers.

The new number, including hyphens, will be shown on all required entry documentation, including the entry summary document, Customs Form 7501, as follows:

XXX-NNNN-NNNC

XXX represents an entry filer code, NNNN-NNN is a unique number which will be assigned by the entry preparer, and C is a check digit computed from the first ten characters.

Entry Filer Code (XXX)

The entry filer code will be the only portion of the entry number that will be assigned and controlled by Customs. All brokers, importers, and others who prepare entry documentation on a regular basis will be assigned a unique three character (alphabetic, numeric, or alpha-numeric) code. The entry preparer will use this code nationwide as the beginning three characters of the number for all Customs entries, regardless of where the entries are filed. The entry filer code will replace the three digit importer/broker numbers currently assigned by Customs districts.

Entry Preparer Assigned Number (NNNN-NNN)

For each entry, the entry preparer will assign a unique number. This number may be assigned in any manner convenient provided the same number is not assigned to more than one transaction.

This number will not be associated with a fiscal year or a Customs district/port. The numbers need not be assigned or used in sequence.

As each entry is received, Customs will record the unique number assigned to the transaction, and will not allow the use of the same number on any subsequent transaction. A duplicate number will result in Customs rejecting the transaction.

Check Digit (C)

The entry preparer will compute the check digit using a formula provided by Customs. These specific details will be made available when the entry filer codes are issued. Customs will assist entry preparers that do not have automation capability to secure the services of a company to handle their entry numbers.

COMMENTS

Before adopting these initiatives, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, U.S. Customs Service, Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601, *et seq.*), it is hereby certified that the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

EXECUTIVE ORDER 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

AUTHORITY

This document is issued under the authority of R.S. 251, as amended (19 U.S.C. 66), sections 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624).

DRAFTING INFORMATION

The principal author of this document was Charles D. Ressin, Regulations Control Branch, Office of Regulations and Rulings,

U.S. Customs Service. However, personnel from other Customs offices participated in its development.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: December 14, 1983.
JOHN M. WALKER, JR.
Assistant Secretary of the Treasury.

[Published in the Federal Register, January 13, 1984 (49 FR 1740)]

U.S. Customs Service

General Notice

19 CFR Part 101

Del Bonita and Wildhorse, Montana; Change in Hours of Service

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposal to change the hours of service currently provided at the Customs port of entry of Del Bonita, Montana, and the Customs station of Wildhorse, Montana, located on the U.S.-Canadian border, in the Great Falls, Montana, Customs District.

The change, which was coordinated with the Immigration and Naturalization Service (INS), was proposed to enable Customs and INS to obtain more efficient use of their personnel, facilities, and resources. However, after consideration of the comments received in response to the proposal and further review of the matter, it has been determined that service at this port and station should continue to be provided at the current hours.

DATE: Withdrawal effective January 11, 1984.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

In general, section 101.6, Customs Regulations (19 CFR 101.6), provides that each Customs office shall be open for the transaction of Customs business between the hours of 8:30 a.m. and 5:00 p.m. on all days of the year except Saturdays, Sundays, and national holidays. It also provides that services performed outside a Customs office generally shall be furnished between the hours of 8:00 a.m. and 5:00 p.m. However, because of local conditions, different but equivalent hours may be necessary to maintain adequate and efficient service.

Del Bonita and Wildhorse, located in the Great Falls, Montana, Customs District, are two man border crossings, jointly staffed by personnel from Customs and the Immigration and Naturalization Service (INS). The current hours of service at these locations are as follows:

Del Bonita

June 1–September 15—8:00 a.m.–9:00 p.m.
September 16–May 31—9:00 a.m.–6:00 p.m.

Wildhorse

May 15–September 30—8:00 a.m.–9:00 p.m.
October 1–May 14—8:00 a.m.–5:00 p.m.

Because traffic at Del Bonita and Wildhorse did not justify the current hours of service, by notice published in the Federal Register on June 14, 1983 (48 FR 27265), it was proposed to change the hours of service for both locations as follows:

May 15–September 30—9:00 a.m.–9:00 p.m.
October 1–May 14—9:00 a.m.–5:00 p.m.

As stated in that notice, this change would have placed both locations on the same operating schedule, reduce overall operating costs, including overtime expenditures, and allow for better scheduling and utilization of available office staff. Before taking any final action, however, public comments were solicited on the proposed change. Comments were to be received on or before August 15, 1983.

Discussion of Comments

Forty-three comments were received in response to the notice. A number of comments apparently were based on erroneous newspaper accounts indicating that Customs would cease weekend service at Del Bonita. This was not even suggested in the proposal. Weekend service will be continued.

The primary concerns of the commenters were the possible adverse economic impact the proposal might have on area businesses, as well as inconvenience for the traveling public. Customs believes that any adverse economic impact or inconvenience would have been minimal. In fact, service would actually have been increased by 3 hours over current hours at Del Bonita during the last 2 weeks of May and the last 2 weeks of September. Moreover, the new hours of service would have eliminated overtime costs which are unnecessary in light of the fact that the volume of traffic at these two locations does not justify the additional hours of service.

However, after further review of the matter, it was determined that the savings to Customs from this proposal would be minimal. In addition, Canadian Customs has expressed some concern over the change in hours of service. In view of these factors, and the

comments received in response to the notice, Customs has determined that the proposed change in hours of service at Del Bonita and Wildhorse is not justified. Accordingly, the proposal is withdrawn.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: November 22, 1983.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

[Published in the Federal Register, January 11, 1984 (49 FR 1380)]

United States Court of Appeals for the Federal Circuit

Appeal No. 83-1018

LOWA, LTD., APPELLANT *v.* THE UNITED STATES, APPELLEE

(Decided: January 4, 1984)

Andrew P. Vance, of New York, New York, submitted for appellant. With him on the brief were *Leonard Lehman*, *John J. Galvin*, *John E. Corette III*, and *Daniel Webster*, of Washington, D.C., of counsel.

J. Paul McGrath, Assistant Attorney General, *David M. Cohen*, Director, *Joseph I. Liebman*, Attorney in Charge International Trade Field Office and *Barbara M. Epstein*, of New York, New York submitted for appellee.

Appealed from United States Court of International Trade, Chief Judge Re.

Before MARKEY, *Chief Judge*, BENNETT, *Circuit Judge* and COWEN, *Senior Circuit Judge*.

MARKEY, *Chief Judge*.

Appeal from a judgment of the United States Court of International Trade (CIT) dismissing for lack of jurisdiction. We *affirm*.

OPINION

The judgment appealed from is affirmed on the basis of the opinion filed by the CIT. *Lowa, Ltd.* v. *United States*, 561 F. Supp. 441 (Ct. Int'l Trade 1983).

AFFIRMED

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
James L. Watson
Nils A. Boe
Gregory W. Carman
Jane A. Restani

Senior Judges

Frederick Landis

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

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The following abstracts of decisions of the Unit
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decisions are not of sufficient general interest to prin
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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSES
				Item No.
P83/422	Newman, J. December 30, 1983	Custom Clock, Inc.	83-3-00349	Not stated
P83/423	Newman, J. December 30, 1983	Federal Pacific Electric Co.	79-10-01605, etc.	Item 682.0 or 11.8%

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Abstracts
d Protest Decisions

DEPARTMENT OF THE TREASURY, *January 5, 1984.*

United States Court of International Trade at New York are officers of the Customs and others concerned. Although the print in full, the summary herein given will be of assistance racing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANIDISE
m No. and Rate	Item No. and Rate		
t stated	Item 688.36 5.1% or 4.9%	Judgment on the pleadings	San Francisco Watch bracelets
m 682.05 12.5% r 11.8%	Item 682.07 6% or 5.6%	Federal Pacific Electric Company v. U.S., abstract P83/226, 7/25/83	Buffalo Series "T", "R" or "RZ" "sensors"

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSE
				Item No.
P83/424	Boe, J. December 30, 1983	Jet Sonic Corporation	82-2-00242	Electroni entiret classifi item 71 duty as various under i 716.10 (modul 720.24 (cases); 740.30, 740.35 item 74 740.38 item 77 791.54 set fort schedul

ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANIDISE
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lectronic watch entireties classified under item 715.05 with duty assessed at various rates under item 716.10 or 716.18 (modules); item 720.24 or 720.28 (cases); item 740.30, 740.34 or 740.35 (bands); item 740.30 or 740.38 (chains); item 774.55 or 791.54 (straps) as set forth in schedule "B"	Item 688.36 5.3% or 5.1%	U.S. v. Texas Instruments, Inc. No. 81-23, 3/25/82	New York Solid state electronic digital watches; entireties

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATIO
R83/733	Re, C.J. December 30, 1983	Metasco, Inc.	75–5–01088	Export value

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LUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
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United States Court of Appeals for the Federal Circuit

84-714 Bethlehem Steel Corp. *v.* The United States,—STEEL—
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Court of Appeals for the Federal Circuit

	Appeal No.
Lowa, Ltd. v. The United States	83-1018

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** SERIALS PROCESSING DEPT
** UNIV MICROFILMS INTL
** 300 N ZEEB RD
** ANN ARBOR MI 48106